In Equity, No. 420.

In the District Court of the United States, District of Utah.

UNITED STATES OF AMERICA, PETITIONER,

v.

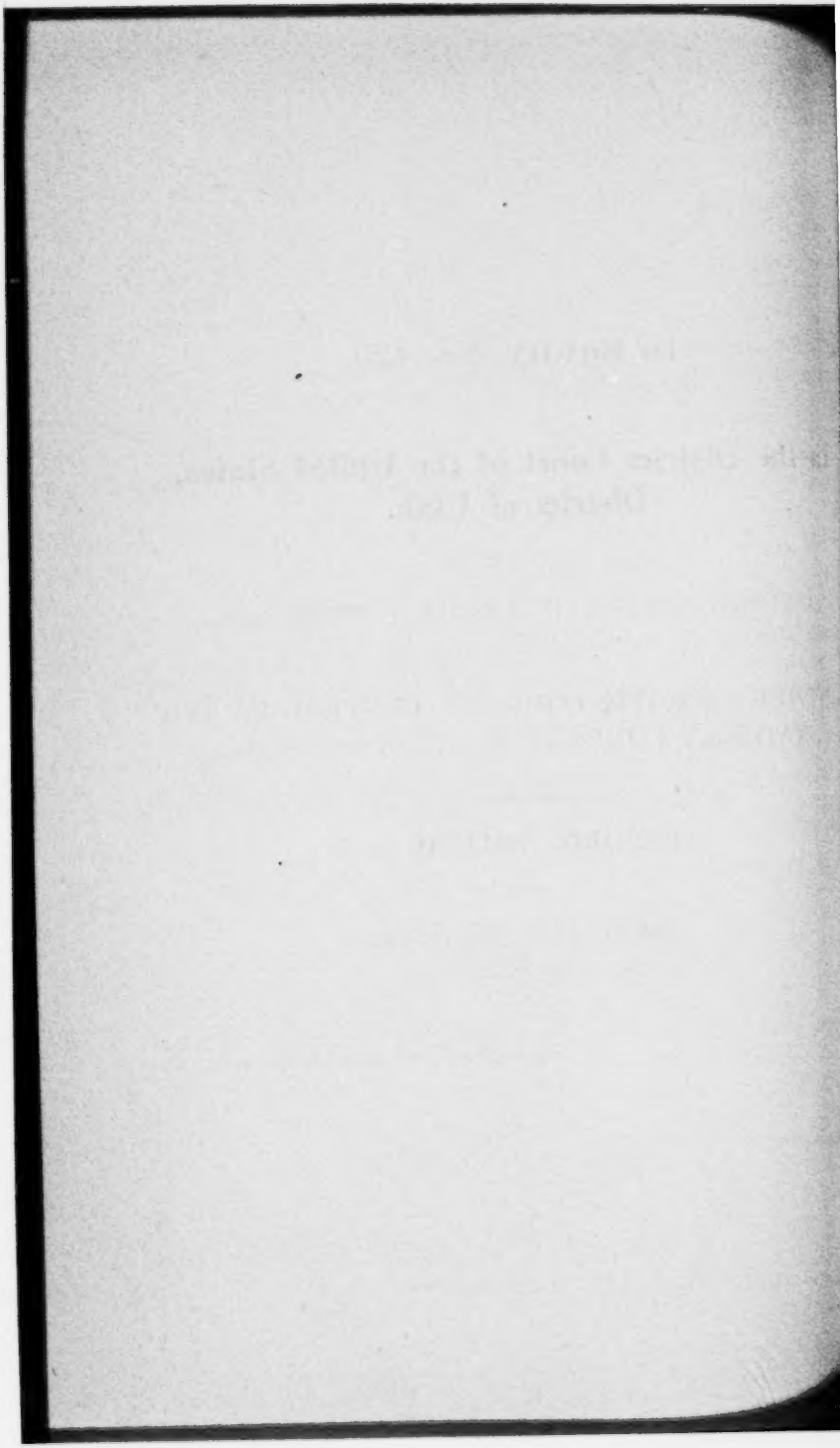
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC RAILWAY COMPANY ET AL., DEFENDANTS.

RECORD—VOLUME 3.

DEFENDANTS' EVIDENCE.

Pages 873 to 1221, inclusive.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1915



1795 TWENTY-FIRST DAY.

ROOM 921, FLOOD BUILDING,
San Francisco, Cal., Saturday, March 13, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., P. F. Dunne, Esq., Garret McEnerney, Esq., and E. J. Foulds, Esq., for the Southern Pacific Company.

1796 JOHN M. ESHLEMAN was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Where do you reside?

A. El Centro, California.

Q. How long have you lived in California?

A. Since 1896.

Q. What is your profession?

A. Attorney.

Q. How long have you been a practicing attorney in California?

A. I graduated from the university in 1892. It was either the next year or the following year, about 1893 or 1894; I can not remember offhand.

Q. When did you become a member of the California Railroad Commission?

A. January, 1911.

Q. How long did you hold that office?

A. Four years.

1797 Q. Were you chairman of the commission while you were on it?

A. I was president. That is the term used.

Q. That commission, as we all know, by the constitutional provisions, has very full and plenary power over rate questions and railroads generally?

A. It has been so charged.

Q. There is no doubt about it, is there?

A. I do not think so.

Q. You did not find any items of power which were taken from you particularly by the constitutional provisions?

A. I have not discovered any.

Q. During your incumbency of office as the president of the commission, was it active in the discharge of its duties?

A. It tried to be; yes; and I think it was.

Q. That is, the members devoted their entire time to the duties of their positions?

A. Yes.

Q. Did you have many contested cases?

A. Very many.

Q. Involving generally what questions, as to railroads?

1798 A. Involving primarily the rates. Also a great many matters of service.

Q. The commission has powers of controlling the service?

A. Yes.

Q. It was given power to fix the rates absolutely?

A. Yes.

Q. So that every phase of railroad operation would come within your purview in these cases that were heard before you?

A. Yes.

Q. Do you recall the matter of a contract between the Union Pacific Railroad Company and the Central Pacific Railway Company concerning a proposed sale of stock of the Central Pacific Railroad by the Southern Pacific Company, and making leases of certain of the lines in California, which were submitted to your commission for approval?

A. I do.

Q. Were you present at the hearing before the commission?

A. I was.

Q. You presided as president, did you?

A. I did.

Q. Did the subpœna served upon you requiring your attend-

1799 ance in this case require the production of any papers?

A. It did not, to my recollection. I have not got the subpœna with me.

Mr. HERRIN. May we use copies of the opinions that were given in that case without producing the original record, Mr. McClennen? I have a printed copy.

The WITNESS. I have the volume in which the opinions are printed.

Mr. HERRIN. You may make a comparison if you want to, Mr. McClennen.

Mr. MCCLENNEN. Of course, I shall want to save some objections to the opinion.

Mr. HERRIN. Yes; but I was speaking of the use of these copies—

Mr. MCCLENNEN. These printed copies you have here may be deemed to have the same force as certified copies.

The WITNESS. I suppose you are probably aware that the courts under the law take judicial cognizance of the decisions of the railroad commission.

By Mr. HERRIN:

Q. I understand that is so with respect to the State courts.

1800 A. Yes.

Q. I hand you a printed volume of opinions and orders of the Railroad Commission of California, volume 2.

A. Would there be any objection to my using my own volume?

Q. Certainly not. And I ask you to refer us to the first opinion, main opinion or report, of the commission given in the case I have mentioned.

A. That is found, beginning on page 233 of the second volume of the opinions and orders of the railroad commission.

Mr. MCENERNEY. It is decision No. 477.

The WITNESS. Yes; then it is followed by a supplemental opinion on page 249, and there is a subsequent opinion on a modified application.

Mr. MCENERNEY. No. 504 is the third one, Mr. Eshleman, I think.

The WITNESS. At page 504?

Mr. MCENERNEY. No; decision No. 504.

Mr. HERRIN. Page 257.

The WITNESS. The main opinion is beginning on page 233. The supplemental opinion begins on page 248.

Mr. MCENERNEY. You will see it in your index here.

1801 By Mr. HERRIN:

Q. I will not go further than those two opinions at present.

A. Very well.

Q. Did you prepare the opinion in decision No. 477?

A. I did.

Q. Also in decision No. 478?

A. I did.

Mr. HERRIN. I offer that opinion in evidence, and ask to have it marked and copied in the exhibits.

What is the syllabus, Mr. Eshleman—a mere condensation?

The WITNESS. Yes. That is not a part of the opinion.

Mr. HERRIN. Then we will omit the syllabus, unless it is desired by counsel for the petitioner, and just copy the main report of the commission as an exhibit.

Mr. MCCLENNEN. Petitioner objects to the introduction of this opinion, as immaterial, incompetent, and irrelevant to any of the issues in the pending case.

(The opinion referred to was received and marked "Defendants' Exhibit (Eshleman) No. 25, March 13, 1915," and will be found in the volume of defendants' exhibits.)

1802 Mr. McCLENNEN. This offer is of decision No. 477 only?

Mr. HERRIN. Yes.

By Mr. HERRIN:

Q. Of course the opinion speaks for itself and appears to deal with some of the traffic conditions that would be affected by the putting into operation of this agreement. I call attention to the clause in the opinion, near the top of page 240, reading:

"We do not believe it necessary to the determination of the questions that are now presented for us to present in detail the traffic conditions which we consider will be brought about if the rearrangement contemplated by this agreement is consummated."

I will ask you, Mr. Eshleman, if you gave special consideration to the traffic conditions that were involved in that agreement and reached any opinion upon those subjects?

Mr. McCLENNEN. This is objected to as incompetent, irrelevant, and immaterial.

The WITNESS. We did; particularly as regards traffic conditions affecting intrastate business.

By Mr. HERRIN:

1803 Q. I will ask you to state what effect the severance of these lines, as proposed by that agreement, would, in your opinion, have upon intrastate traffic?

Mr. McCLENNEN. The petitioner objects to this question on the ground that it is immaterial, incompetent, and irrelevant, calls for an opinion as to probabilities in a matter which is not material to the issues in this case, and as to which the witness is not qualified to express an opinion, and as calling for an opinion based upon facts which have not been shown in the present case and concerning which the petitioner, of necessity, has no opportunity to test the accuracy, by examination of the witnesses or otherwise from whom the facts were obtained upon which the opinion of the present witness is based.

Mr. HERRIN. I will state that the petitioner introduced in evidence the contract which was considered by the railroad commission in the opinion just introduced, and that contract, in connection with the opinion, makes clear the matters that were considered by the railroad commission, and I deem it unnecessary to take up time here to amplify those things which already appear from the record. I will ask for an answer to my question, and will ask to have it read.

1804 (The reporter repeated the pending question as follows:)

"Q. I will ask you to state what effect the severance of

ese lines, as proposed by that agreement, would in your opinion ave upon intrastate traffic?"

The WITNESS. In my opinion it would have a dual effect: First, ne of convenience; second, one of price; that is, the rate.

In the particular case it was agreed by the parties before the com- ission that the granting of the application would not be used by hem as a means of increasing any of the rates that, after the sev- rance, applied upon traffic that at such time would go over two ines, that before the severance would only go over one line.

The commission was of the opinion, and I was then and am still, hat this severance ultimately would of necessity affect all rates that hereafter applied upon traffic over two lines.

The Interstate Commerce Commission and the California Railroad Commission, as well as most commissions, have recognized the fact hat a higher rate shall prevail for what is known as a joint move-
ment over two lines than prevails for a similar movement
1805 over one line under like circumstances. That being the case, as to every movement in California that at the present time nd then was made over the one line, Southern Pacific controlled properties, there would be a right on the part of the owners when the ownership was divided to demand a higher return for the joint movement than was given for the single movement.

To illustrate that I have had taken from the tariffs—and these, of course, are subject to check, but they are taken from the tariffs— some illustrations of movements that would be required to be over Southern Pacific and Central Pacific after the divorce, that are now over only Southern Pacific controlled lines. If you desire, at this time, I will give those.

Mr. HERRIN. Yes; proceed.

Mr. MCCLENNEN. This question is objected to on the same grounds as the preceding one, and also as introducing into the record in- stances which are further immaterial to the present case.

By Mr. HERRIN:

Q. Proceed, Mr. Eshleman.

1806 A. Lumber is probably the most important commodity han- dled by the Southern Pacific Company. According to their last annual report, copies of which I will be glad to submit, which I have from the files of the railroad commission, 18.34 per cent of their traffic is lumber. Most of this lumber originates on one line and is used upon the other line, if we have regard to the division between the Central Pacific and the Southern Pacific.

For instance, the rate from Weed to Colton is $6.50 per ton. That movement would be from Weed to Goshen Junction by way of the Central Pacific, thence from Goshen Junction to Colton by way of the Southern Pacific. The rate applying for the single movement

over the Southern Pacific controlled line from Weed to Colton is $6.50; the local rate from Weed to Goshen Junction is $6.30, and the local rate from Goshen Junction to Colton is $5.00, making a combination of $11.30 per ton, or $4.80 increase, provided, when the roads were divided the public authority and control would permit the sum of the locals as the new rate to apply. I do not mean to intimate that that would be, because while, as I have already said, it is conceded by those who are engaged in regulating, including the
1807 Interstate Commerce Commission, that where rail movement is over two lines there should be the higher rate. It has never been conceded, except in rare instances, especially with regard to less than carload freight, that a joint movement shall have a rate which is equal to the sum of the locals. I did not mean to imply that the rate would be $11.30. I do mean to imply, however, that if we follow the precedents that have been established, and I think could be justified if these roads were divorced, the rate from Weed to Colton would be more than $6.50. It is my opinion that the Southern Pacific and the Central Pacific, for that joint movement, could justify a rate higher than $6.50, provided the $6.50 at the present time is a reasonable rate.

I have numerous instances, but I will only take a few, as I do not want to burden the record with many of these.

Take from Santa Cruz to Ione. It would be by Southern Pacific from Santa Cruz to San Jose, thence by Central Pacific from San Jose to Galt, then by Southern Pacific from Galt to Ione, a three-line movement. The rate from Santa Cruz to Ione over the Southern Pacific controlled line for the single movement is $2.65, the rate over the S. P. from Santa Cruz to San Jose is $1.20, and from San Jose to Galt it is $1.60, and from Galt to Ione $1.60, making a total,
1808 based on the sum of the locals, of $4.40, or $1.75 greater than the present single-line rate. Here again I do not mean to intimate that the commission could be forced to allow the sum of the locals. I am of the opinion, however, that it could be forced to allow more than the present rate of $2.65, provided the present rate of $2.65 is not unduly high.

On cement we have a like condition. Cement, of course, is manufactured at comparatively few places in the State, and the commodity rates apply from those places. From Davenport, where there is a cement factory, to Newman the present rate is $2.00. That movement is over the Southern Pacific from Davenport to San Jose, over the Central Pacific from San Jose to Tracy, and over the Southern Pacific from Tracy to Newman. The rate by this line, which is the line over which the rate now applies, is $2.00. The sum of the locals over the three-line movement would be $3.65. It may be noted that this could be routed from Davenport to Newman entirely over the

lines of the S. P., by going to San Francisco and thence to Newman by Southern Pacific line, so it may be a case where there would not necessarily be any change, but the present rate only applies through Niles and is a three-line movement.

1809 Take the rate from Bay Point to Placerville, where it would be impossible to carry traffic, if the roads were divided, other than over two lines; the rate at present is $3.00 per ton. That traffic is carried by Southern Pacific from Bay Point to Sacramento, by Central Pacific from Sacramento to Brighton, and by Southern Pacific from Brighton to Placerville. The rate applying now over the Southern Pacific controlled lines is $3.00. The sum of the local rates that are in effect there on segments of these lines that I have designated amounts to $3.80, being an increase of 80 cents. I have various others similar.

Likewise coal; there are innumerable cases almost of all these commodities where, if a division is made, rates will have to apply for a joint movement over two independent lines which now only apply over one single controlled line, and in every one of those instances it is my opinion that unless there are some extraordinary conditions prevailing the roads could justify a higher rate for the joint movement than they can justify for the single movement.

Q. The instances you have given are merely types of illustrations of thousands of others that could be given?

1810 A. Merely illustrative. I think there are, perhaps, close to millions; they are almost innumerable, of course.

Oil, of course, is another commodity that is very important. That would, almost all of it, have to be moved over a two-line haul instead of a single as at present.

Cattle is another important industry that is similarly affected.

Q. Have you any reference to the oil rates?

Mr. McCLENNEN. Note to this question the same objection that has been made to the other questions relating to particular instances.

The WITNESS. The oil rate from Bakersfield to Merced is $2.30 per ton. Oil moved from Bakersfield to Merced would have to be moved over Southern Pacific lines from Bakersfield to Fresno, thence over the Central Pacific from Fresno to Merced, unless it was desired to move it up to the junction near Kerman, I think—I don't exactly remember the name. There is an alternative line, but you would have to have a three-line movement if you went that way. My understanding from the tariff is, and from operating conditions, that that traffic moves from Fresno to Merced. Such being the case, it would have to move Southern Pacific from Bakersfield to Fresno, thence via Central Pacific from Fresno to Merced.

1811 The rate applying at present over the Southern Pacific controlled lines is $2.30 per ton. The rate from Bakersfield to

Fresno is $1.55, and from Fresno to Merced, $1.20, making $2.75 as the sum of the locals, which is 45 cents per ton in excess of the present rate.

Likewise from Bakersfield to Oakdale we have a three-line movement: Southern Pacific line, Bakersfield to Tracy; Central Pacific from Tracy to Stockton; and Southern Pacific from Stockton to Oakdale. The sum of the locals exceeds the rate that is now in effect by $1.30 per ton. That is illustrative of the condition.

By Mr. HERRIN:

Q. Take Bakersfield to Chico; there is some considerable movement of oil between those points?

Mr. MCCLENNEN. The same objection as heretofore.

The WITNESS. Yes. Oil, of course, moves quite generally all over the State.

By Mr. HERRIN:

Q. Oil is in general use as fuel; that is, crude oil?

A. Yes.

Q. And it is moved from the fields—Bakersfield in one and Coalinga and other points—generally over the State?

1812 A. Yes; Bakersfield to Chico—the rate applying at present is $2.65. That would have to move Southern Pacific from Bakersfield to Marysville and C. P. from Marysville to Chico. The sum of the locals exceeds the rate now in application by 85 cents.

I should say that the testimony I am giving would have to be modified as to these movements after the lines were divided, if they were divided, that came into competition with another single-line movement over an independent road. For instance, if the Santa Fe had a single-line movement between two points involved, the fact that the Central Pacific and the Southern Pacific were under separate ownership—while that might justify a higher rate as a practical proposition—they would not, and there would be no danger under those circumstances.

Q. You gave some lumber rates, did you not?

A. Yes. There is another commodity that I intended to speak about, and that is ore; because of the fact that practically every bit of ore produced in the State would of necessity have to be hauled by two and almost in every case a three line movement.

Q. Do you wish to give any instances of ore?

1813 A. Well, of course, ore is well known. It is produced in the mountain counties ordinarily.

Q. What points of shipment do you get ore from?

A. Well, ore comes from up on the Sierra Railway, the mines up there, the Southern Mines they are called; and, of course, there are

various places on the Central Pacific, the main line, and from points on the Placerville branch.

Q. Shipped to what point?

A. Usually to Selby for smelting. For instance, from Ione to Selby. Ione gets ore from the mines around Jackson, one of the most important mines in the State. That rate at present is $1.00. The rate from Ione to Galt over the S. P. is $1.00, from Galt to Tracy is $1.00, and from Tracy to Selby is $1.00, making a combination of locals—which, again, I do not wish to be understood as saying I think could be justified, but which it would be the tendency of the carriers to contend for—of $3.00, as against the $1.00 at present.

Q. There are other instances of ore rates that can be given for shipments from points in the mountains?

A. Yes.

Q. But the one given is illustrative?

A. It is illustrative of the general conditions.

1814 Q. You spoke of cases where a competing line like the Atchison could furnish an alternative routing, instancing, of course, that it would not make any difference what they might justify themselves in asking to receive; in the absence of competition, competition would control in that case?

A. Yes.

Q. Does that govern many of these cases?

A. Not many of the cases I have given. It would affect many cases in the San Joaquin Valley, but north of that it would not affect many. The Western Pacific would have a small effect in portions of the Sacramento Valley. The Southern Pacific has a good deal of exclusive territory in the State of California.

Q. You have given instances of lumber rates?

A. I have.

Q. That is a very large and important volume of traffic in California?

A. Yes; the largest single item of traffic, I think, the Southern Pacific has.

Q. Moving from points to the north to points in the interior of the State and south?

A. Principally from points in the north. Some is pro-

1815 duced at points on the Sierra Railway and delivered to both Southern Pacific and Santa Fe at Oakdale, but the amount is relatively inconsiderable.

Q. What you have stated illustrates the point you make concerning rates?

A. Yes.

Q. We might go on at great length giving details; but the illustrations you have given, I take it, are sufficient to show the principle involved.

Mr. McCLENNEN. If that be a question, it is objected to.

Mr. HERRIN. No; it is not a question. I was going to add to it.

Mr. McCLENNEN. If it is not a question, it is objected to——

The WITNESS (interposing). I will answer the question over objection.

Mr. McCLENNEN. If it is now understood to be a question, it is objected to as leading, containing several statements of facts not in the record, calling for an opinion and conclusion of the witness.

The WITNESS. My answer to that question is: These have
1816 been merely illustrations of a general condition that I know prevails from studying the tariffs and knowing the lines of these two carriers; that is, the lines that would be separately controlled, were the Southern Pacific required to sell the Central Pacific.

By Mr. HERRIN:

Q. As to the service which is now given by the Southern Pacific Company, operating all these lines, and that which could be given if the two companies operated the lines separately, what would you say?

Mr. McCLENNEN. The petitioner objects to this question as calling for matter immaterial and incompetent and irrelevant; for an opinion of the witness on a matter not of importance in this case, and for a statement of opinion as to future probabilities.

The WITNESS. My opinion is that it would very seriously interfere with the convenient operation of the lines of the Southern Pacific, as now operated. I know of no alternative method of operation that would give as good service as the Southern Pacific is now giving.

By way of illustration, the Owl, a well-known train to Los Angeles, could not run through Fresno unless it went around
1817 through Porterville. No through train to Los Angeles could go through the most populous portion of the San Joaquin Valley, namely, what is known as the east side, through Modesto, Merced, Turlock, and that line there. No through train could be operated to Oregon. There are various other minor details; for instance, the Oakdale branch, so called, which begins at Stockton and serves the Southern mines through Milton to Oakdale, and there joins on to the Central Pacific again at Merced. It would be, as you might say, up in the air, the Southern Pacific line adjoining a Central Pacific line on both ends. The same might be said for the Galt and Ione branch, and the Lodi and Valley Spring branch. I do not mean to be understood as saying that joint arrangements could not

be made, but if joint arrangements are to be made it is hard for me to understand why there would be any advantage in tearing the lines apart.

Mr. McCLENNEN. The last part of the answer is objected to——

The WITNESS (interrupting). I do not mean to argue it, and I will cut it out if you desire, and will merely say that I do not mean to be understood as saying that joint arrangements could not be made.

1818 By Mr. HERRIN:

Q. In some instances joint arangements are made between different carriers, as for example, between the Southern Pacific and the Central Pacific for operating their respective trains over the Tehachapi Mountains; that is one instance?

A. Yes.

Q. But do you know any case in your experience where arrangements are made generally for the running of trains over all lines covered by a system such as there is in California, owned by two different companies, so as to throw them open to each as freely as if they were operated by one company?

A. I assume you desire to object to this.

Mr. McCLENNEN. No.

The WITNESS. I do not know of any such arrangements, and do not believe, from my knowledge of these lines, that such an arrangement could be successfully consummated to give the service that is now given.

Mr. McCLENNEN. The latter part of the answer, beginning with "and do not believe", the petitioner moves to strike out as not responsive, as an expression of opinion by the witness upon an-

1819 other subject not material to the issues in the present case.

By Mr. HERRIN:

Q. With respect to freight trains, the movement of traffic between points on the Southern Pacific, such as the line from Davisville up to Tehama, and points on the Southern Pacific lines in the San Joaquin Valley and southern California, for example; that traffic now moves freely to the Central Pacific and thence to the Southern Pacific at Goshen by direct line, but the separation of these lines would force that traffic, unless there was some joint arrangement made, to move by what line?

A. It would have to move by what is known as the Roseville line, and thence, if you are referring to the Central Pacific, to get to Goshen, thence over to Sacramento, thence over to Stockton, thence over to Lathrop, and thence over to Merced, and then from Fresno to Goshen, and stop there.

Q. That is the way the traffic is moved now, but if you had to haul traffic, say, at Willows.

A. That is on the west side?

Q. That is on the west side.

A. Well, the west side line of the Sacramento Valley is an S. P. line, and it would require all joint movement for
1820 all traffic originating between Tehama and Sacramento.

Q. Do you have in mind how the Southern Pacific could move that over its own line, say from Willows or Woodland, to Bakersfield, or any other point on the Southern Pacific lines in the San Joaquin Valley?

A. They would have to take it back to Port Costa, and thence through Tracy, Newman, and what is known as the west side, if they moved it entirely over their own line. The Southern Pacific, of course, could not carry it beyond Goshen in any event.

Mr. HERRIN. I offer in evidence Supplemental Opinion No. 478, on this contract, which appears at page 248; decided February 24, 1911. That is the same day as the main case opinion, the main opinion?

The WITNESS. Yes; they were handed down together.

Mr. MCCLENNEN. The petitioner makes the same objections to the introduction of this decision as to defendants' Exhibit 25.

(The supplemental opinion referred to was received and marked "Defendants' Exhibit (Eshleman) No. 26, March 13, 1915," and will be found in the volume of defendants' exhibits.)

1821 By Mr. HERRIN:

Q. I overlooked asking you as to the terminals of these lines of road when separated, as to the conditions that would arise and the practicability of these different companies performing public service, with respect to these terminals.

Mr. MCCLENNEN. The same objections that have been made to an expression of an opinion by the witness, as heretofore.

The WITNESS. I do not pretend to know. I do not think anyone knows just what the ownership of those terminals is. I know, however, that there is very great confusion existing. It was in evidence—and I desire to distinguish between what was in evidence and what I know of my own knowledge—but it was in evidence in the case that as to some of the Oakland terminals, for instance, the fee was owned by one company and the franchise by another, and there were various conflicts of that sort; but I have no knowledge except that. I do know, however, that in some places the Southern Pacific is dominant and in others the Central Pacific, but I do not desire to go on record as stating anything except the general knowledge that these terminals are almost inextricably confused as to ownership.

1822 By Mr. HERRIN:

Q. What would be necessary, in case of the separation of the roads? Would each road provide its own terminals or otherwise?

A. It would be necessary for each road to provide its own terminals, or secure access to the terminals of the other road on whatever terms it could. It would have to have terminals.

Q. In what way would the public be interested in that matter?

A. Well, the public would be interested in getting access to the road over which it desired to route its freight, and as to industries located on lines of the Southern Pacific, for example, the people located on those lines would not have access to the Central Pacific lines, as a general proposition. The shipper, of course, can demand the routing of his freight, but it would substitute two sets of terminals where one now exists, or require the same use of those terminals jointly as we have now. In other words, whenever one road admits another to its facilities, it does so on which are the best terms to itself that it thinks it can exact and prevent the other fellow from building terminals of his own.

1823 Q. In the case of providing separate terminals throughout, how would that interest the public?

A. It would require duplicate investments to carry out the same business, and rates could be justified, on this basis, on a higher plane than could be justified if there were less property. I do not know how much effect it would have, but unquestionably it could be used in a rate case with some effect.

Q. Mr. Eshleman, when did you cease to be a member of the California Railroad Commission?

A. January 1, 1915.

Q. What was the occasion of your leaving that office?

A. I had to go to Sacramento as lieutenant governor.

Q. You were elected lieutenant governor?

A. Yes.

Q. And are now lieutenant governor of the State?

A. Yes.

Cross-examination by Mr. MCCLENNEN:

Q. In stating the powers of the California Railroad Commission, while you did not state it in terms, you had of course in all

1824 your answers a reference only to intrastate business?

A. Intrastate business, of course.

Q. You instanced the lumber traffic as amounting to eighteen per cent. Did you mean eighteen per cent of the whole freight business of the Southern Pacific Company or of the intrastate freight business of the Southern Pacific Company?

A. My answer is taken from the last annual report of this company, and it is the total freight originating on that road of all kinds.

Q. Then the eighteen per cent of lumber traffic to which you refer in that answer includes both the intrastate and the interstate?

A. Well, now; I am not quite sure. I can find it. Of course you know answers such as that are taken from the record, and my understanding was that that covered the entire lumber traffic, both State and interstate. If I am in error, by consulting the record I can determine. By referring to the record I find that the California business is 13.86 per cent, and the 18 is State and interstate as originally stated.

1825 Q. That is, then, to put it all together; of the whole freight traffic of the Southern Pacific Company, State and interstate, the whole lumber traffic is eighteen per cent, of which thirteen is intrastate and five is interstate?

A. Yes; that is what the report states. I do not pretend in this answer to go beyond the report of the Southern Pacific, which is on file with our commission and with the Interstate Commerce Commission. I merely gave that testimony as illustrative of the fact that is known independently, that this constitutes a large portion of their freight.

Q. Is that percentage in terms of tons carried or ton miles carried, or revenue?

A. That is in percentage of tons.

Q. How much of that thirteen per cent is carried merely from Oregon to milling point and destined to interstate shipment?

A. I do not know.

Q. Are there any figures in the reports that have been made to your commission that would give that division?

A. Not that I know of.

Q. You have general knowledge of the fact that that is done to a considerable extent?

1826 A. I know that such an arrangement is in effect; that is, that lumber is treated and then shipped to other points from the point at which it is treated.

Q. Have you any knowledge as to what part of the thirteen per cent originates on Central Pacific rails and is delivered on Southern Pacific, or vice versa?

A. I have not; but from my knowledge of the geography of the State I know that by far the greater portion of the lumber originates on Central Pacific points.

Q. The great bulk of the lumber originates where?

A. Well, of the lumber originating on either of these lines, the great bulk of that originates up toward the Oregon line and on the line of the Central Pacific across the Sierra Nevada Mountains, and a considerable portion comes into the Southern Pacific—this cut-off

ine that I referred to—through the Sierra Railway of California at Oakdale. The greater proportion of lumber that is produced in California originates—now, this is my opinion; I am quite sure hat it is correct, however—originates on neither of these lines.

Q. On what lines does this greater proportion you speak of originate?

1827 A. It comes in by boat, and on the line of the Northwestern Pacific. That is my belief, from my knowledge of the geography of the State. I have been over all of these lines, and know the general locations, of course.

Q. Could you, in justice to yourself, approximate the percentage?

A. I could not. As to such traffic, however, of course, when it is turned over to one of these lines, if it required a joint movement over the two, the same arrangement I have already suggested would be necessary.

Q. That coming in by water, destined to Central Pacific points, would, in the nature of things, be delivered directly to Central Pacific rails?

A. Yes; it would go by way of Stockton, if it were going to Sacramento, instead of by way of Benicia.

Q. And that destined to Southern Pacific rails, conversely, would naturally be delivered originally——

A. When it is delivered at a point touched by both lines—of course, the only point touched by both lines is San Francisco—San Pedro, I believe, receives equally, if not a greater amount of lumber; but that is only a belief. I know it receives a great quantity of lumber, and that is only touched by the Southern Pacific.

1828 Q. It is not possible, is it, that much lumber is delivered into San Pedro destined to Central Pacific points?

A. No; I would say that it is not probable that much of that goes north of Goshen that is for intrastate consumption. However, I am of the opinion that on the Porterville line lumber would come from southern California that would require—well, that is the Southern Pacific line; that would be the Southern Pacific line; yes.

Q. Taking your knowledge of the whole situation into consideration, could you make a valuable estimate as to how much of the whole thirteen per cent passes from the Central Pacific lines to the Southern Pacific lines, or the reverse?

A. No; I could not. My only knowledge is that some of these towns I have mentioned are quite prominent and growing towns, and I know that quantities—I would not say great as compared with the whole bulk—but great quantities of lumber are used in points in the San Joaquin Valley to which I have referred.

Q. Most of the important points in that valley are touched by the Atchison rails, are they not?

A. Well, I suppose the majority of the population is reached by the Atchison rails.

1829 Q. Has the Atchison been carrying much lumber into those competitive points?

A. I have not their report here, but they, of course, carry lumber into those points.

Q. Has the divided-haul rate in those cases been the same as the Southern Pacific's rate?

A. They carry it entirely over their own lines to those points. The Atchison has a line to tidewater here and they go entirely over their own rails.

Q. Does the Atchison carry any lumber into those competitive points originating in northern California?

A. I do not think it is allowed to get much of that business; but I have very little knowledge on it. I am sure that by very far the major portion of the lumber originating on one line will be delivered by that line to its destination, because of the fact that a joint rate would have to be established, which, under the law, would have to give the Southern Pacific, from the point at which the lumber was turned over to it to the point of destination, its full local rate. The interstate law is similar. That is, if lumber originating at Weed were turned over to the Atchison at Stockton the full local

1830 rate to Stockton would have to be given the Southern Pacific, the law providing that where there is an equally advantageous rate entirely over the lines of the carrier in question it is entitled to its local rate.

Q. Has that been the division of rates between the Southern Pacific and the Atchison on freight originating in Southern Pacific territory and delivered to competitive points, intrastate and interstate?

A. By getting the tariffs it would be very easy to determine what joint rates are in effect. Between numerous points you refer to there are no joint rates, and therefore the movement would have to go, if it went by a joint line movement, on a combination of the locals, which, of course, would be much in excess. That, however, is a mere tariff matter. My general knowledge of the tariff leads me to answer that there are not many joint rates over the Southern Pacific and Atchison for lumber between the points that are entirely served by the Southern Pacific and can be served by the Southern Pacific.

Q. You spoke of the Atchison not being allowed to get much of that business—the context showing what you meant by "that." Does

that same apply to freight generally originating on Southern Pacific rails?

1831 A. If I may be allowed to explain just what led me to make that answer, I think I can make it plain.

It has been recognized by the Interstate Commerce Commission and by the various commissions that a railroad shall not be short-hauled; that is, where a railroad has built a line between two points, that it shall not be required to turn traffic over at an intermediate point to another line and lose a lot of the haul; and when it does that, the road that takes the freight pays pretty liberally for the privilege. For instance, the division of the interstate rate west of the Missouri River is forty-six per cent of the entire rate. For instance, the Western Pacific from Ogden would get forty-six per cent. If the Western Pacific at Niles had some traffic for San Jose, which is seventeen miles away, I believe, the Southern Pacific would require it to give twenty-three per cent of the west of the Missouri River proportion; that is, it would have to give half of what it got out of the rate from the Missouri River point to Niles to the Southern Pacific for carrying it seventeen miles.

Q. That is, if I follow you, the rate from Omaha, as an example of a Missouri River point, to any point in California, is di-

1832 vided fifty-four from Omaha to Ogden and forty-six from Ogden to California?

A. That is true; that is over the Western Pacific—well, I think it applies over all the roads; yes.

Q. Then, of this forty-six per cent, anything carried by the Western Pacific and delivered on Southern Pacific rails is divided twenty-three per cent——

A. No; it is divided in half.

Q. I mean the forty-six is divided in half?

A. Yes.

Q. So that the Southern Pacific gets twenty-three and the Western Pacific gets twenty-three per cent?

A. That is true.

Q. And the Union Pacific, or what not, to the east gets fifty-four?

A. Yes.

Q. And that is irrespective of the number of miles of haul of the Western Pacific?

A. Yes. The same applies to the other companies.

Q. That is, to put an extreme illustration: If the Southern Pacific hauled it one mile to Sacramento and delivered it to the Western Pacific for Ogden or Salt Lake, the Southern Pacific would

1833 get twenty-three and the Western Pacific twenty-three?

A. Unless there is some special rule covering the case. That is the general rule, and that was the explanation of my answer that it is not very often the case that much business that originates on a line that can lay it down at its destination goes off that line before it reaches its destination.

Q. That would apply in actual practice to the Atchison as to freight originating on Southern Pacific points in the same way?

A. Yes.

Q. The California commission has authority to control trackage rights to some extent between——

A. I am sure it has authority to control them to this extent, that voluntary agreements on the part of the carriers must receive the sanction of the commission. As to the forcing of the joint use of facilities, I am not quite decided as to what the courts would finally say.

Q. You mean as to whether the commission could, out of hand, compel one railroad to grant trackage rights to another?

A. As a matter of law, I am not prepared to state, it not having been litigated.

Q. It has the——

1834 A. It has the veto power, in other words. The affirmative power is conferred by the law. The law is broad enough to carry that power. In my opinion, of course, the presumption is that the power is there, although as a pure legal proposition, it has not been passed upon.

Q. It has the authority to establish joint rates and through routes?

A. Yes; but under the limitation I have already stated about the road being required to get its full local, that has an entire line over the route over which the joint rate applies.

Q. Have you any knowledge as to the comparison between the volume of the Southern Pacific Company's interstate business and its intrastate business?

A. I can not answer that question offhand. I could consult records and find out very readily. It is in the reports.

Q. In the same way, have you any knowledge of the comparison between the Central Pacific Railroad's interstate business and intrastate business, using Central Pacific Railroad to indicate those parts of the lines belonging to that company?

1835 A. I would have to give the same answer to that. I can very readily obtain the information, but I do not carry it in my memory.

Q. As a practical matter, if the division between the two companies was accomplished, it would not, in your opinion, effect an in-

crease of rates between any points where there are competitive facilities?

A. Ordinarily, no; but a rate could be justified, as I have already testified, that would be higher; and if the company that now was competing felt that it was not getting enough, there probably would be an application to raise the rates by both. There have been such cases. I do not mean to be understood as saying that I think that would ordinarily occur. I do not think it would ordinarily occur.

Q. The difficulties which you have expressed your opinion as possible to occur in the matter of rates and service on the severance of these two lines are difficulties which, in a measure, would occur in case of almost every break-up of combined railroads?

A. I could not answer that in the affirmative without some reservations. I think that the way these roads have grown up to-
1836 gether has brought about a condition that we do not find in the ordinary combination.

Q. There are a good many instances through the country of similar situations, are there not?

A. Well, I do not know of any of them that are being unmerged.

Q. The railroads through the country do not get unmerged very often according to your experience?

A. They do not, and if you desire an expression of opinion—and it may explain my attitude on this—my entire position and the position of the commission was assumed mainly on the theory that a regulated or Government-owned monopoly was better than any condition that could be brought about by competition in the case of railroads.

Q. You have anticipated what I had in my mind; that is, your opinion as to the injuries, if any, to be anticipated from the unmerging of these railroads is based upon your belief in the economic wisdom of regulated monopoly in railroads?

A. Yes. My belief is that regulation by Government authority is an alternative to regulation by competition and is only justified on the ground that competition does not do its duty.

1837 Q. And that you recognize, as a lawyer, to be addressed more to the legislative question of whether the Sherman Anti-trust Act should apply to railroads than to the judicial question when a case is presented that comes within the terms of the act?

A. It is directed to what I think ought to be perhaps; not what is.

Q. That is, what ought to be as a matter of legislative policy?

A. Yes. Take this particular case; either the public of California, in my opinion, would be inconvenienced by this severance or more money will have to be expended to enable two agencies to do that which one agency now does, with the necessary additional earnings

on the necessary additional investment. But, as you say, that goes to the policy and not what the law demands.

Q. Do you identify this record as the official record of the proceedings of the commission on this application before the commission of which you are speaking?

A. I do. I know it is a part of it. I do not know whether it is all of it.

1838 Q. Just make sure, please, that it goes through the argument. I would like to make sure that it is the whole record.

A. This, I am sure, covers the main case. As you know, there is a telegram to Attorney General McReynolds, which was subsequent, but I do not think this covers that. I know it covers the main case, however.

Mr. McCLENNEN. That is all.

Redirect examination by Mr. HERRIN:

Q. The rule that you spoke of, which was enforced in favor of the company having a line to not short-haul it, was applied indiscriminately against one company or the other?

A. Yes. I think I said that.

Q. If the Southern Pacific Company should take a carload of freight from the Western Pacific at Sacramento to haul to Ogden, it would be treated just as if the movement was the other way?

A. Oh, yes. The only difference is that the company in possession of the terminals, of course, always has the advantage. That would necessitate, on the division of these lines, the company that found itself in any important place without terminals, building the

1839 terminals which, under traffic conditions, we all know could not be as advantageous to that line as the terminals that have been long located and upon which industries have grown up. But this applies among all the lines, this arrangement.

Recross-examination by Mr. McCLENNEN:

Q. This last remark of yours leads me to ask you this: You, of course, have in mind the decision that you have rendered with reference to the features of this contract between the Central, the Southern, and the Union, so far as you regarded it to come within your jurisdiction?

A. Yes.

Q. And one of the features that you dealt with, you are aware, was the fact that the Southern and Central-Union owned, were to have joint use of terminals by voluntary agreement, to which they had not yielded access to other carriers?

A. It was the exclusive use to which the commission objected.

Q. That was a program which the commission then had occasion to lay down for the first time under the powers of control which it conceived that it exercised in the State?

1840 A. That was, I know, the first important case, and I think the first case in which that question arose.

Q. Has the commission, so far as you know, ever had occasion to consider whether it would exact the same requirement as to letting other carriers into terminals jointly used by two railroads forced asunder by the law and not put asunder by voluntary agreement?

A. Of course I am not a member of the commission at the present time, and anything I might say I would want to be thoroughly understood as having no bearing upon the attitude of the commission.

Q. Let me make clear that I do not wish to exact a prediction from you of what the decision would be. I merely want to know whether any decision had been reached while you were a member of the commission, or has been reached, as far as you know, up to the present time, upon that subject; or whether that subject has been given consideration up to the present time.

A. It has been given thought. It has not been given any official consideration, to my knowledge.

In that particular case the commission was impressed with

1841 the fact that the condition you suggest did not exist. Our entire belief there was the belief that the Union Pacific, which was the offender, was much better off after the unmerging under the agreement than it was before. The Southern Pacific, which was the innocent party in that case—it has not always been innocent in everything—was the one which suffered the most.

In other words, as the commission said in those decisions—I think that was in the telegram to Attorney General McReynolds—that apparently there was a design to perpetuate the advantage of the merger, or of the control which the Supreme Court had condemned, and we could not see why there could not be real unmerging in the unmerging. My belief is that, just as I have said, those contracts were absolutely unfair to the Southern Pacific and served to perpetuate the very dominance of the Union Pacific which the Supreme Court had condemned.

I make that explanation, because in that case there was no condition of joint use of terminals between the Union Pacific and the Southern Pacific. The joint use of terminals there would be between a line which the Government, or the parties in that case, were trying to make the Southern Pacific sell to the Union Pacific; and

1842 what we said there could not be taken as an indication of what I would now say if the case were between the Central Pacific and the Southern Pacific.

Mr. McCLENNEN. That is all.

Mr. HERRIN. That is all.

1843 Mr. McCLENNEN. The petitioner, without waiving the objections appearing in the record to the introduction of any evidence of the resolution of the San Francisco Chamber of Commerce or any of its actions, but which the petitioner still conceives to be inadmissible, but insisting on those objections, nevertheless, against the possibility of the petitioner being in error as to the relevancy of that action and for the purpose only of making clear the action of the San Francisco Chamber of Commerce in the matter of a severance between the Southern Pacific Company and the Central Pacific Railroad Company, puts in evidence the action taken by that chamber before the California Railroad Commission, as shown by the record of those proceedings, identified by the last witness, Mr. Eshleman; that is to say, the record on application No. 409, in the matter of the application of the Central Pacific Railway Company, Southern Pacific Railroad Company, and Southern Pacific Company for authorization to make a lease of a certain railroad, to make a sale of a certain railroad, to make a contract for the joint use and possession of a certain railroad, to make a contract for the running or trackage rights over a certain railroad, and to make
1844 a contract for the joint use of certain railroad terminals, so much of this record as relates to the action of the San Francisco Chamber of Commerce, namely, in the proceedings of February 24, 1913, at page 404 of this record, the following:

"Mr. MANN. If the commission please, Mr. William R. Wheeler, the traffic manager of the San Francisco Chamber of Commerce, would like to be heard here, on the views of the shippers he represents, very briefly.

"Commissioner ESHLEMAN. Then we will accord that privilege. We will take a recess for about five minutes.

"(Recess.)

"(After recess.)

"Commissioner ESHLEMAN. The commission will come to order. Mr. Wheeler, you may take the stand.

"WILLIAM R. WHEELER, a witness called in behalf of San Francisco Chamber of Commerce, being duly sworn, testified as follows:

"Direct examination:

"The WITNESS. If the commission please, I wish to merely point out in connection with the attitude of the San Francisco
1845 Chamber of Commerce the strategic position which the line of the Southern Pacific Railroad between Sacramento and San Francisco via Benicia occupies. The resolution of the San Francisco Chamber of Commerce is directed against a sentence which appears

the second paragraph, page 13, of the proposed agreement, which reads: 'No additional companies shall be admitted to use the property except upon the written consent of both the Pacific Company and the Central Company.' It is the veto power of the lessee company contained in that sentence that is objected to. We do not think it is to the best interest of San Francisco that that veto power should exist in the hands of the lessee company. Now, with your permission—I will be as brief as possible—I want to point out why we take that position. Here is this line which, you might say, so far as the Southern Pacific's interests are concerned with relation to strictly transcontinental traffic, becomes a stub line after this agreement becomes effective. This route occupies the shortest most direct route between San Francisco and Sacramento that exists to-day, and for that matter in all probability that will ever exist. There are, I am informed, engineering difficulties with regard to building. The extension, even of the Sacramento Southern, across the marshes
1846 will be a very expensive proposition. And after coming through there they have to find a way along the water front or through the mountains which surround Mt. Diablo to get over to San Francisco. Now, let us look for one moment at the trend of railroad building to-day. I will overlook—say nothing of the Rock Island, with its line out to Denver; not emphasize that; nor the Burlington also, with its line to Denver and some 200 miles further east to a station called Baldwin, Colorado; that is, through the Colorado Southern. I speak of the controlling company—the Colorado Southern. The Burlington has another line that runs here to Gurnsey, Wyoming. Now, recently the Moffatt line has taken on new life, and they propose to extend this line, which is now some 200 miles westerly from Denver, on to Salt Lake. They are financing it, as I understand, with a view to tunneling through the mountains and making this line to Salt Lake. It is of particular interest at this time to San Francisco to note that the Northwestern—that is, the Chicago Northwestern—has built out some 1,250 miles westerly from Chicago to the western part of Wyoming; in fact, it is not very far from the meridian of Ogden now to a point called Landa. It is not reasonable to assume that that line, or, in fact, these other lines
1847 which are making these extensions, are going to be content to stop where they are. They will be seeking entrance to San Francisco in the near future very likely. Now, more important still to San Francisco than all of that, and because of the fact that this covers a ground not already covered, even approximately, by other roads, is a proposition which is now alive—building a road from Winnemucca northeasterly to Boise, with the intention of extending same on to Butte, Montana.

"Mr. MANN. What is the name of that road?

"A. That road is known as the Winnemucca Northern; it gives to San Francisco a direct substantially bee line in connection with the Great Northern over its Great Falls cut-off with the Northern Pacific, and with the Chicago, Milwaukee & Puget Sound, the three northern transcontinental roads; it will also give us, when completed, a direct line to the ore-bearing field and into the great wheat-bearing field. We all know California is becoming less and less of a wheat-growing country, and we have to bring our bread from abroad, or from outside the State, and it gives opportunity for reaching up into this country to bring wheat on a bee line down here. At Winnemucca it has the advantage of a connection with two roads, the Western Pacific and the Central Pacific, both of
1848 which roads converge at Winnemucca. Now, the interest San Francisco has in having this road left open here is that any of these roads may have the opportunity of using the shortest possible direct route at the will of the owning company and not at the will of the lessee company. It is not to be expected that the Union Pacific, with its Central Pacific route, would give its assent to the Northwestern, after it came through the Sierras, using this cut-off into San Francisco; it would not be reasonable they would expect to want to give up the advantages they have to a competitor. And that is the position that San Francisco takes with regard to this situation, that the veto power contained in that clause is inimical to our best interest. Dwelling upon this Winnemucca Northern road for a minute, it places San Francisco in position to compete with Portland, Seattle, and Salt Lake, and even St. Paul, for the trade of Montana and Idaho, which it is very difficult to get any business from at all to-day for San Francisco. With this direct line, the shorter and quicker the service is the better it will be for our city.

"Q. Thus you take a stand against the veto power in the Central Pacific Railroad for the use of the line Oakland to Sacramento. Is that right?

1849 "A. That is exactly right.

"Q. Now, then, with respect to the terminal situation and the use of the industrials.

"A. Inasmuch as Judge Lovett, in his testimony the other day places those in the same category in so far as the veto power is concerned, as I understood him, why, our objections apply with equal force. There is one thing more I want to say before I leave the stand and that is the advantages of additional roads with regard to competition. It is a popular fallacy, I think, that because there is not a rate war, because there is not a cutting of rates, general demoralization of rates, following the advent of a new road into a territory that, therefore, there is no competition. There is competition in the

service, and that is what we desire. There is also competition in this respect, that if we have two roads who have a voice in the rate question, you stand 100 per cent, or double, the chance of gaining tariff concessions that you do if there is only one road to deal with; if there are three roads, you stand three times the chance of getting your concessions; or if four, four times, and so on; in other words,

you do not find—are not as apt to find—three men of one mind
1850 as you are two men of one mind, and so on as the number grows. We have already had an example of that here in San Francisco. There was a proposition something more than a year ago to advance rates between San Francisco and Stockton, make a very material advance, on the part of the railroads, and the fact that it required the assent of three roads instead of two was the only thing that prevented that advance going into effect at that time; we were successful in convincing one of the roads that it was unfair to us to raise those rates and they declined to join in the advance. That is all I have to say.

"Cross-examination:

"Mr. COTTON. Mr. Wheeler, did you file a copy with the commission of your resolution adopted February 18, 1913?

"A. No; I left a copy with Judge Lovett.

"Q. I was wondering; you referred to it as if you had filed it.

"A. I would be very glad to read the resolution into the record if you like.

"Commissioner ESHLEMAN. Very well, you may.

"A. 'Resolution of the executive committee of the San Francisco Chamber of Commerce, adopted February 18, 1913.

1851 "'Resolved, That so far as we are at present advised, we approve of the terms of the proposed agreement dated February 8, 1913, between the Union Pacific Railroad Company and the Southern Pacific Company et al., relating to leases, sales, trackage rights, and joint use of terminals, which terms are to be submitted to the California Railroad Commission for consent and approval, and are referred to in subdivision 2 of section 8 on page 32 of said proposed agreement, with the exception of the clause found on page 18 of Exhibit B, which reads:

"'"No additional companies shall be admitted to use the property except by the written consent of both the Pacific Company and the Central Company * * *" and

"'Resolved, That the manager and attorney of the traffic bureau are hereby authorized to express the attitude of the chamber in this regard before the California Railroad Commission, at the hearing to be held February 19, 1913, or any adjournments thereof.

"'And be it further resolved, That a copy of this resolution be immediately transmitted to the chairman of the executive committee of the Union Pacific Railroad Company.'

"The reason for that was that we were invited into this
1852 case by a series of telegrams which I think it might be just as well to put into the record here too, with your permission Mr. Chairman.

"Commissioner ESHLEMAN. You might state the substance.

"A. Well, the substance is this: This is a telegram from one of the officials of the Union Pacific Railroad, Gerrit Fort, under date of January 6th, addressed to in my official capacity, and urging our cooperation in bringing about the ratification of this lease—this proposed contract. To that we replied under date of February 7th, 'Yours sixth. While I heartily approve of separation of Central Pacific from Southern Pacific and the establishment of Central's managerial and operating headquarters in San Francisco, you will appreciate that I will not be in position to lend intelligent assistance until after I am advised of the details concerning "Certain trackage and running rights" in this State.' To that we received this reply, 'Thanks for your message. It is intended that the Central Pacific shall acquire trackage rights over the Southern Pacific between Sacramento and Oakland via Benicia, thus preserving double track transcontinental line between San Francisco and the Mis-
1853 souri River, and that the Southern Pacific shall acquire trackage rights over the Central Pacific line north of Tehama, thus preserving the continuity of its present line between Oregon and eastern points and California.'

"Commissioner ESHLEMAN. Any further questions, Mr. Cotton?

"Mr. COTTON. You think it is not reasonable to expect that the line controlling the route from Ogden to Oakland should admit a new tenant—a competing tenant? Is that your notion?

"A. I don't think it is likely to do so.

"Q. And that would be the case, no matter who might be the owner of that line?

"A. Well, so long as the tenant has the veto power.

"Q. Well, or as long as the Southern Pacific alone had the veto power, provided it retains the line to Ogden?

"A. Yes.

"Q. And you think there might be some advantages in the separation of the Central and the Southern?

"A. If it is a genuine separation, and we have four roads instead of three.

"Mr. COTTON. That is all."

1854 Mr. HERRIN. That is offered solely to show the action of the chamber of commerce at the time mentioned, is it?

Mr. McCLENNEN. Solely for that purpose, in view of the testimony which we believe to be objectionable, which you have put in upon that subject.

Mr. HERRIN. What I mean is: You do not offer that as the testimony of Mr. Wheeler here as an expert witness, or anything of that sort?

Mr. McCLENNEN. Oh, I do not offer it as independent evidence of the things stated in it, but simply as evidence of the statement made on behalf of the chamber of commerce in those proceedings.

(Whereupon, at one o'clock p. m., an adjournment was taken until Thursday, April 15, 1915, at eleven o'clock a. m., at 165 Broadway, New York City.)

1855 TWENTY-SECOND DAY.

ROOM 2506, 165 BROADWAY,
New York City, April 15, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq.; Edward F. McClennen, Esq.; and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., and J. P. Blair, Esq., for the Southern Pacific Company.

1856 WILLIAM MACALLISTER, Jr., was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. What is your occupation?

A. Clerk in the Central Trust Company.

Q. You were asked to bring with you the original indenture made by the Central Pacific Railroad Company to the Central Trust Company of New York to secure a certain mortgage, generally known as the first refunding four per cent mortgage. Have you produced it?

A. Yes, sir.

Q. This indenture was duly executed and delivered?

A. Yes, sir.

Q. Were the bonds described in this indenture issued in accordance with its terms?

A. Yes, sir.

Q. Are they now outstanding?

A. Yes, sir.

Mr. BLAIR. Counsel for the defendants put in evidence a
1857 printed copy of the indenture referred to by the witness, being an indenture of the Central Pacific Railway Company to the Central Trust Company of New York, dated August 1, 1899; and it is stipulated between counsel that this copy shall be received in lieu of the original and have the same effect as the original.

(The document referred to was received and marked "Defendants' Exhibit (Macallister) No. 27, April 15, 1915", and will be found in the volume of defendants' exhibits.)

CHARLES C. MARSHALL was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. What is your occupation, Mr. Marshall?

A. I am a clerk in the corporation trust department of the United States Trust Company.

Q. The United States Trust Company was the trustee of a certain indenture made by the Central Pacific Railway Company to the United States Trust Company of New York to secure a certain issue of three and a half per cent mortgage bonds dated August 1, 1899?

A. It was; yes, sir.

1858 Q. You were asked to produce the original indenture. Have you done so?

A. Yes, sir.

Q. Will you hand it over for exhibition to counsel?

A. Yes. Here it is.

Q. Was this indenture duly executed and delivered?

A. Yes, sir.

Q. Were the bonds therein described issued in accordance with its terms?

A. They were.

Q. Can you tell us now how many of those bonds are at present outstanding?

A. $10,658,500, par value.

Q. How were the remainder of those bonds described in the original indenture retired?

A. Through sale of securities that were held by us as collateral under that indenture, from the sales of lands, and also through a sinking fund provision in the indenture providing for $25,000 annually.

Mr. BLAIR. Counsel for the defendants puts in evidence a
1859 copy of the indenture referred to by the witness, namely, the indenture of the Central Pacific Railway Company to the United States Trust Company of New York, dated August 1, 1899;

and it is stipulated that said copy may be offered in lieu of the original, and to have the same effect as the original.

(The document referred to was received and marked "Defendants' Exhibit (Marshall) No. 28, April 15, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Was the United States Trust Company the trustee of an indenture made by the Central Pacific Railway Company, the Southern Pacific Company, and the United States Trust Company of New York to secure an issue of bonds dated March 1, 1911?

A. Yes, sir.

Q. Is that the issue of bonds known as the European loan?

A. Yes, sir.

Q. You were asked to produce the original of that indenture. Will you produce it for exhibition to counsel?

A. Yes, sir. Here it is.

Q. Was this indenture duly executed and delivered?

A. Yes, sir.

Q. Were the bonds described therein issued?

1860 A. Yes.

Q. And are now outstanding?

A. And are now outstanding.

Mr. BLAIR. The defendants put in evidence a copy of the indenture just referred to by the witness, namely, an indenture between the Central Pacific Railway Company, the Southern Pacific Company, and the United States Trust Company of New York as trustee, bearing date of March 1, 1911; and it is stipulated that the copy may be received in evidence in lieu of the original and to have the same effect as the original.

(The document referred to was received and marked "Defendants' Exhibit (Marshall) No. 29, April 15, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Was the collateral referred to in this indenture delivered to the United States Trust Company?

A. Yes, sir; and is now held by it.

Mr. ORR. That is two hundred and fifty million?

Mr. BLAIR. Two hundred and fifty million francs; fifty million dollars.

1861 Cross-examination by Mr. MCCLENNEN:

Q. Are any of the bonds, the $10,658,500 that you say are outstanding under Exhibit 28, registered bonds?

A. A few of them, I think; something like fifty thousand. I think fifty-one thousand to be exact. We do not keep the ledger. We are the registrar of the bonds. The company is the transfer agent, but from our register, where we cancelled the old certificates and issued the new, as I remember it, about fifty thousand of them are fully registered certificates.

Q. That is fifty thousand dollars or fifty thousand bonds?

A. Fifty thousand dollars par value.

Q. Have you any knowledge of where or by whom that issue of bonds is held?

A. I have not the remotest idea. They are widely distributed.

Mr. McCLENNEN. That is all.

Mr. BLAIR. Counsel for the defendants puts in evidence the agreement between the United States of America, the Central Pa-
1862 cific Railroad and Messrs. Speyer & Company, of date February 1, 1899, being the agreement known as the settlement agreement between the United States and the Central Pacific Railroad Company; and it is stipulated that, in lieu of the original, the copy of said agreement, Exhibit A of the answer, or the copy found in the record of the Union Pacific merger suit, volume 8, page 3790, and following, may be copied into the exhibits, to have the same effect as if the original had been produced in evidence.

(The agreement was received and marked "Defendants' Exhibit No. 30, April 15, 1915", and will be found in the volume of defendants' exhibits.)

ANDREW K. VAN DEVENTER was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. What is your present position?

A. Treasurer of the Southern Pacific Company.

Q. What position did you hold in 1898 and 1899?

A. I was chief clerk of the Southern Pacific Company's office at that time.

1863 Q. The treasurer's office?

A. The assistant treasurer's office.

Q. Of the Southern Pacific Company?

A. Yes.

Q. Do you know whether the issue of bonds of one hundred million dollars of the Central Pacific Railway Company, known as the company's first refunding mortgage bonds, dated August 1, 1899, was guaranteed by any company; and if so, by what company?

Mr. McCLENNEN. This question is objected to as not material and as calling for the contents of a written instrument.

The WITNESS. They were guaranteed by the Southern Pacific Company.

By Mr. BLAIR:

Q. Can you produce the form of guaranty?

A. I can.

Q. What is the document which you have produced?

A. That is the Central Pacific Railway Company's four per cent bond.

Q. Is this the form of one of the issues of bonds actually outstanding?

1864 A. It is; yes, sir.

Q. I call your attention to the form of guarantee endorsed and ask you if that is the form on the bonds outstanding.

A. It is.

Mr. BLAIR. Is there any objection to reading this into the record instead of offering the entire bond?

Mr. MCCLENNEN. I do not see any objection.

Mr. BLAIR. In lieu of offering the bond referred to it is agreed that the stipulation thereon endorsed may be read into the record, and it is as follows:

"For value received the Southern Pacific Company hereby guarantees unconditionally the punctual payment of the principal and interest of the within bond at the time and in the manner therein specified and covenants in default of payment of any part thereof by the obligor to pay the said principal and interest of the within bond as the same shall become due upon demand of the holder hereof.

"In witness whereof the said Southern Pacific Company has caused its corporate seal to be hereto affixed and this instrument to be signed by its president or one of its vice presidents this

1865 first day of August one thousand eight hundred and ninety-nine.

"SOUTHERN PACIFIC COMPANY,
"By VAUGHN M. COYNE,
"*Vice President.*"

Mr. MCCLENNEN. Note that this stipulation is made reserving the objections the petitioner makes that the guaranty referred to is not one which is called for by the provisions of the agreement with the United States, defendants' Exhibit No. 30, and is immaterial to this case.

By Mr. BLAIR:

Q. Is this bond one of the issue of bonds which were pledged to secure the notes given to the United States in settlement of the in-

debtedness of the Central Pacific Railroad Company under the settlement agreement of February 1, 1899?

A. It is.

Q. Did the bonds, when so pledged, bear this guarantee of the Southern Pacific Company?

A. They did.

Q. How do you know this?

A. Because it was my duty to examine those bonds when they were delivered by the American Bank Note Company to the
1866 assistant treasurer. They were turned over to me for examination, and to see that the bonds were signed and delivered to the Central Trust Company as trustee.

Q. And they bore this guarantee on them at the time they were so delivered?

A. They did.

Q. Did you afterward have occasion to receive these bonds pledged back from the United States Government?

A. I did.

Q. Did you then have occasion to see that the guarantee was still on them?

A. I did.

Q. Were the notes of the Central Pacific to the United States covered by this agreement of February 1, 1899, which has been offered in evidence, paid?

A. They were.

Q. By whom were the first four maturing notes paid?

A. They were paid by Speyer & Company; taken up by Speyer & Company.

Q. And by whom were the remaining sixteen notes paid?

A. They were paid by the Southern Pacific Company.

Q. Were the payments made all together in cash, or was
1867 any part made through credits or through credit for services?

A. It was made by both payments for transportation services and by cash.

Q. Have you the sixteen notes in your possession now at this hearing?

A. I have.

Q. Will you produce those sixteen notes?

A. Here they are.

Q. Where did you get those notes?

A. Those notes were delivered to me by our representative from Washington.

Q. No; I mean how did you get them at the present time?

A. These notes had been sent on here from San Francisco in 1913.

Q. In 1913?

A. Yes.

Q. So they escaped——

A. They escaped the fire. You have reference to the fire of January 8, 1912, in the Equitable Building?

Q. Yes.

Mr. McCLENNEN. You do not mean 1912, do you?

1868 The WITNESS. Yes. That was the date of the fire—January 8, 1912. That was the fire in the Equitable Building.

Mr. McCLENNEN. Was that 1912?

The WITNESS. Yes.

By Mr. BLAIR:

Q. From whom did you receive them?

A. They came to me from the assistant treasurer at San Francisco.

Q. Who was the assistant treasurer?

A. Mr. H. A. Jones.

Q. Have you the check stub books of the Southern Pacific Company covering the period over which these notes extended?

A. I have, for fourteen of them.

Q. The last fourteen?

A. The last fourteen.

Q. Will you please explain what has become of the stub book of the Southern Pacific Company covering the period of the maturity of the fifth and sixth notes?

A. When Mr. Harriman took over the Southern Pacific Company we moved from the offices at No. 23 Broad Street to No. 120 Broadway. All vouchers, papers, check stubs and so forth were sent up to our pier for storage and safekeeping. Among those papers and records were the check stubs.

1869 Q. And what happened to the check stubs which on that occasion were sent to the pier?

A. They were destroyed by a fire.

Q. So that you had a fire at the pier?

A. We had a fire at the pier.

Q. What date was that?

A. There were two of them. One was in 1907 and one in 1910.

Q. By which fire were these check stub books destroyed?

A. I can not tell you that, but by one of the two fires.

Q. By one of those two fires?

A. Yes. I can not tell you which they were destroyed in.

Q. You have the check stub books covering the maturities of the remaining fourteen notes?

A. I have; yes, sir.

Q. How did they escape the fire?

A. Because those checks were issued after we had moved to No. 120 Broadway.

Q. Where were they at the time of the fire at No. 120 Broadway?

A. They had been sent to the pier for storage and safekeeping.

1870 Q. And they were there at the time that there was not a fire?

A. At the time there was not a fire.

Q. Is that true?

A. That is true.

Q. Have you produced for exhibition to counsel the notes referred to—sixteen notes?

A. The sixteen notes; yes, sir.

Q. And have you produced and have you here the check stub books?

A. Yes, sir.

Q. How many of these check stub books have you now produced?

A. Thirteen.

Q. What did you have to do, if anything, in connection with the payment of these notes, or any of these notes? I am speaking now of the last fourteen notes.

A. The last fourteen. The checks for the amounts due at the maturity of the notes would be drawn in my office and I personally delivered them to the assistant treasurer of the United States here in New York.

Q. They were the checks of what company?

1871 A. The checks of the Southern Pacific Company.

Q. And after you had personally delivered those checks to the assistant treasurer of the United States, what was the next thing that you had to do with the transaction?

A. The next thing would be that the bonds which were held as collateral against each note, and the note itself, would be brought over to me from Washington by our representative.

Q. And it would be received by you?

A. It would be received by me.

Q. Have you certified copies from the books of account of the United States Treasury showing the accounts kept by the United States Treasurer in respect to these notes?

A. I have.

Q. Will you produce them for exhibition?

A. Yes, sir [witness producing notes].

Q. Mr. Van Deventer, have you been able to prepare, and have you prepared, from the entries on the check stubs and the endorse-

ments on the returned notes, a statement showing the dates of the payments, and how much was paid by check of the Southern Pacific Company and how much by transportation services?

1872 A. I have.

Q. Have you checked that statement that you prepared, by reference to the certified copy of the accounts of the office of the Treasurer of the United States?

A. I have; yes, sir.

Q. Is the statement which you have prepared correct?

A. It is.

Q. Will you let me see it?

A. Here it is [witness handing statement to counsel].

Q. This statement simply shows, in considerable detail, the payments which you have testified to, by the Southern Pacific Company?

A. Yes, sir.

Mr. BLAIR. The witness is yours.

Cross-examination by Mr. MCCLENNEN:

Q. The notes which you have produced here are the sixteen notes which were paid to the United States and not the four which were taken up by Speyer & Company?

A. They are.

Q. Are the four notes which were taken up by Speyer & Company in existence?

1873 A. They are.

Q. The sixteen which you have produced here are subsequent, in maturity dates, to the four that were taken up by Speyer & Company?

A. They are.

Q. Did you personally deliver to the subtreasurer the sixteen checks which accomplished the payment of the balance on each of these sixteen notes?

A. I did.

Q. Those checks were made payable in what form; will you tell me, if you have the stub book here?

A. My stub books will show.

Q. What is the first date of a payment for which the stub is still in existence?

A. (After examining stub book.) July 30, 1902.

Q. With this stub and a blank check, which you now have before you, will you read into the record the original check as it was issued; that is, create this check.

A. The check would read:

NEW YORK, *July 30, 1902.* No. 596.

THE NATIONAL CITY BANK OF NEW YORK:

1874 Pay to the order of Conrad M. Jordan, assistant treasurer at New York, $918,744.93.

Nine hundred eighteen, seven hundred forty-four dollars 93/100.

SOUTHERN PACIFIC COMPANY,

(Signed) A. K. VAN DEVENTER,

Assistant Treasurer.

Countersigned:

WILLIAM MAHL, *Controller.*

Q. Was the form of the other sixteen checks the same as that of the one you have created for the record here?

A. It was; allowing for the differences when there were different treasurers. Mr. Hamilton Fish was the treasurer during the latter part of the maturity of those notes.

Q. Did you see those checks when they came back canceled from the bank?

A. No; I do not know that I did.

Q. You have no personal knowledge of the course that those checks took from the assistant treasurer's hands until they got back to your office as canceled checks?

A. Nothing more than that they came to us from the City Bank, against which the checks were drawn.

Q. Those sixteen checks you personally delivered to the
1875 assistant treasurer in New York?

A. The assistant treasurer in New York or his representative.

Q. Do you remember whether any of them were delivered to the assistant treasurer himself?

A. The greater part of them were.

Q. When you delivered the check did you at the same time receive back the notes, the balances of which were paid by that check?

A. No, sir.

Q. Did you receive the note subsequently or prior to the delivery of the check?

A. Subsequently.

Q. And how soon after the delivery of the check?

A. Usually a couple of days.

Q. The first check which you delivered was delivered on or about August 1, 1901?

A. No; you will find that those notes were paid before maturity by reference to that certified statement of account there.

Q. Referring to the certified statement, it appears from the statement from the United States Treasury that the balance of the
1876 note was paid on February 23, 1900. Is that correct?

A. That is right.

Q. Then on February 23, 1900, or thereabouts, you took a check to the assistant treasurer in New York in payment of that fifth note?

A. Of the fifth note.

Q. It being the first one which had been paid to the United States?

A. Yes.

Q. To make that perfectly clear, by "the first one paid", being the fifth note, you mean to exclude the first four maturities, being the four notes taken up by Speyer & Company?

A. I do.

Q. And when you received the note you received it from the assistant treasurer or from the assistant treasurer's office?

A. No. The note and the collateral held against the note was delivered to our representative at Washington, and he would in turn bring the bonds and the note and deliver them to me.

1877 Q. So that you have no personal knowledge of the manner in which your Washington representative acquired the note from the representative of the United States? You simply know that at some time a little subsequently to your giving the check your representative at Washington came to you in New York with the note and the collateral?

A. Yes.

Q. And when you received the note it had on the back of it this indorsement, which it now has:

"Treasury Department, office of the Secretary, February 21, 1900. Without recourse"—a name which it is difficult to decipher—and "Acting Secretary of the Treasury"?

A. Yes.

Mr. BLAIR. You are referring, now, to the note maturing at what date?

Mr. MCCLENNEN. I am referring, now, to the note maturing August 1, 1901, payable August 1, 1901.

By Mr. MCCLENNEN:

Q. The check for the sixth note, that maturing February 1, 1902, was issued in February, 1901?

A. Yes, sir.

Q. And when you received that note it bore upon the back the indorsement "Without recourse. L. J. Gage, Secretary of
1878 the Treasury"?

A. Yes, sir.

Q. Was that note also received from your Washington representative in the same way you have described for the first one?

A. Yes, sir.

Q. Did you, at the time of the delivery of the checks to the Assistant Treasurer, receive any receipts or other voucher for them?

A. I received receipts.

Q. Are any of those receipts in existence?

A. They are not.

Q. For convenience I will read into the record one of these notes, note No. 6:

"$2,940,635.78. San Francisco, Cal., February 1, 1899. On or before February 1, 1902, the Central Pacific Railroad Company will pay to the order of the United States of America two million, nine hundred and forty thousand, six hundred and thirty-five and 78/100 dollars, with interest meantime at the rate of three per cent per annum, payable semiannually. For value received.

"This is one of the series of twenty notes given by said
1879 railroad company to the United States of America, each for the same principal sum, and bearing interest at the same rate, but maturing at different dates; that is to say, on or before the expiration of each successive six months for ten years, counting from the date hereof.

"If default shall be made in any payment of either principal or interest of any of said notes, or any part thereof, then all of said notes then outstanding, principal and interest, shall immediately become due and payable.

"CENTRAL PACIFIC RAILROAD COMPANY,
"By ISAAC L. REQUA, *President.*

"Attest:
"W. M. Thompson, Secretary.

"Corporate seal Central Pacific Railroad Company."

On the reverse side: Cancelled revenue stamps and

"Interest paid to August 1, 1899, $44,109.54.
"Interest paid to February 1, 1900, $44,109.54.
"Interest paid to August 1, 1900, $44,109.54.
"Interest paid to February 1, 1901, $44,109.54."

Mr. HERRIN. Will you call attention to the fact that the note is canceled?

1880 Mr. MCCLENNEN. Cancellation punch mark appears through the paper.

Mr. HERRIN. Through the signature to the note.

Mr. MCCLENNEN. Through the signature to the note and the attestation.

What has been read from the back of the note is all in handwriting. That has been read from the face of the note is all in print, except e due date, February 1, 1902, and the words "Isaac L. Requa" and W. M. Thompson" and the corporate seal.

By Mr. McCLENNEN:

Q. The copy to which you have referred of the account received om the United States is a photographic copy of the original ccount?

A. It is.

Q. It is entitled "Central Pacific and Western Pacific Railroad ndebtedness ($58,812,713.48) under agreement of February 1, 1899." "Twenty semiannual notes of $2,940,635.78, each with interest at ree per centum."

That is correct?

A. That is correct; yes, sir.

881 Q. On this account the first four notes, with an item of accrued interest, constitute the debit side of the account?

A. They do.

Q. And the balancing credit is the item "1899, March 27, by re-emption through Speyer & Company of first four notes maturing ugust 1, 1899, to February 1, 1901, with interest, covering warrants os. 1693 and 1694"?

A. Yes, sir.

Q. Thereafter on this account a separate account is kept with ach of the sixteen notes?

A. That is right.

Q. And on the debit side for each note, is the principal of that ote and the items of interest up to the date when it was taken up?

A. That is right.

Q. On the credit side, taking, for instance, note No. 5, due August , 1901, it is in this form:

1899, July 31, by proportion (1/16) trnspn. service February 1 to July 31, 1899	$25,753.15
August 1, by cash payment	18,356.39
1900, January 31, by proportion (1/16) trnspn. service, August 1, 1899, to January 31, 1900	37,977.07
882 "February 1, by cash payment	6,132.47
"February 27, by cash payment by Central Pacific R. R. Co., February 23, 1900, the note due August 1, 1901, with accrued interest (covering warrant No. 991)	2,946,194.79
	3,034,413.87

That is correct?

A. That is correct.

Q. In each instance of the cash payments prior to the final item for the principal of the note, the amount of cash added to the proportion of transportation service credit makes up the amount of the interest to that date?

A. That is correct.

Q. For convenience: The significance of that "1/16" which appears in the item is that the transportation service for the period was attributed equally to the interest on each of the sixteen notes still outstanding?

A. It was.

Q. And as the notes were paid, the fraction varied, 1/15 and 1/14, and so on down?

A. It did.

1883 Q. The Southern Pacific Company has always kept accounts of its relation with the Central Pacific Railroad Company or the Central Pacific Railway Company?

A. It has.

Q. These checks of the Southern Pacific Company, which you have referred to as delivered to the Assistant Treasurer of the United States, were, in that accounting, charged against the Central Pacific Railroad?

A. They were.

Q. So that, in the final incidents of these payments, the payments were made by the Central Pacific Railroad Company?

A. The payments were made by the Southern Pacific Company for account of the Central Pacific Railroad Company.

Q. So that the payment was borne by the Central Pacific Railroad Company?

A. It was charged to their account.

Q. And the charge was met by the Central Pacific Railroad Company?

A. It was.

Q. In the same way, the transportation for which the United States gave credit against these notes was either performed over the road of the Central Pacific Railroad or else was charged against the

1884 Central Pacific Railroad Company by the Southern Pacific Company in accounting between the two companies?

A. I am not the accounting officer, and I can not tell you how that was done, actually.

Q. The money that was obtained from the refunding four per cent bonds, the mortgage of August 1, 1899, and from the three and a half per cent bonds, the mortgage of August 1, 1899, of the Central Pacific Railroad Company, was received, as a matter of banking, by the Southern Pacific Company, was it not?

A. It was.

Mr. BLAIR. What bonds are you referring to? Are you referring to the entire issue?

Mr. MCCLENNEN. No; the money received.

Mr. BLAIR. Are you referring to the entire issue or to those bonds that were returned by the United States Government?

Mr. MCCLENNEN. I am referring to the entire issue of the four per cent refunding bonds and three and a half per cent bonds, so far as they resulted in money and not in a mere exchange of securities.

Mr. BLAIR. I do not know whether the witness understood
1885 your question. That is the reason I asked.

The WITNESS. No; I did not. I——

Mr. MCCLENNEN. Let me make it clear, then.

Mr. BLAIR. Let him make his correction first.

The WITNESS. The bonds were received by me. They were sold from time to time, and the amount that we received for the bonds was credited to the account of the Central Pacific Railway Company.

Mr. BLAIR. And you are now referring to the bonds received from the United States Government on the payment of these notes?

The WITNESS. Yes.

Mr. BLAIR. And not to the entire issue of the bonds?

The WITNESS. No.

(Whereupon, at 12.30 o'clock p. m., a recess was taken until 2 o'clock p. m.)

1885-a AFTER RECESS.

ANDREW K. VAN DEVENTER, the witness under examination at the taking of recess, resumed the stand and testified further, as follows:

Cross-examination (continued) by Mr. MCCLENNEN:

Q. Were all of the bonds of the Central Pacific Railroad Company which had been deposited with the United States as collateral for these sixteen notes of February 1, 1899, and which were subsequently received back when checks were given to cover those various notes, subsequently sold?

A. They were all sold; yes.

Q. And all the proceeds of sale were carried to the credit of the Central Pacific Railroad Company?

A. Yes.

Q. The Southern Pacific Company acted as the fiscal agent or banker for the Central Pacific Railroad Company in all of its money transactions, did it?

A. I do not know that I can say that it acted as banker or fiscal
1886 agent. They did just as I have said to you, they paid these notes, charged them to the Central Pacific Railway Company,

Q. That is, not being a cash transaction, it did not pass through your hands?

A. It did not pass through my hands.

Q. Only cash transactions passed through your hands?

A. Yes; the cash transactions only passed through my hands.

Q. Who would be the individual who would know to what extent that item of $1,366,442.43 was Southern Pacific Company receivable, and what portion of it was Central Pacific Railroad Company receivable, and what treatment was made of the two parts on the books of the company?

A. The controller's office.

Q. And who was the controller at that time? That would be in March, 1901.

A. William Mahl was controller at that time.

Q. Where is Mr. Mahl now?

A. His home is in the city. I do not know that he is here.

1891 Q. That is, in the city of New York?

A. Yes.

Q. Did the Central Pacific Railway Company receive the proceeds of the bonds secured by the mortgage of March 1, 1911, known as the European loan?

A. They did; yes, sir.

Q. Was that money paid directly in to the treasurer of the Central Pacific Railway Company by the brokers or syndicate, or whatever floated the loan?

A. It was paid to the Southern Pacific Company.

Q. And credited to the Central Pacific Railway Company in the accounting between the Southern Pacific Company and the Central Pacific Railway Company?

A. That is my recollection; yes.

Q. The guarantee that has been put in evidence—the guarantee of the four per cent first refunding bonds of August 1, 1899—is engraved, is it not, upon the bond itself?

A. It is.

Q. That is, it is not detachable from the bond?

A. Oh, no; it is engraved upon the bond itself.

1892 Redirect examination by Mr. BLAIR:

Q. I understand you to say that the cancelled checks of the Southern Pacific Company used in making the payments to the Government are not in existence so far as you know?

A. That is correct.

Q. Who was Mr. Chambers?

A. Mr. D. A. Chambers was our representative at Washington.

Q. By "our representative" you mean the representative of what company?

A. Of the Southern Pacific Company.

Q. How long had he been the representative of the Southern Pacific Company at Washington in 1898 and 1899? How long prior to those dates had he been the representative of the Southern Pacific Company at Washington?

A. Oh, many years, Mr. Blair. I can not state how many, but it was a good many years.

Q. What were his chief duties?

A. His duties, so far as my connection with him was concerned, were to look after the collection of the warrants and transmit them to the treasurer.

1893 Q. Warrants for what purpose?

A. For transportation services.

Q. Rendered by what company?

A. Rendered by the Southern Pacific Company.

Q. Were those warrants large in amount and frequent in number?

A. Yes; they were.

Q. Requiring him frequently to appear at the Treasury Department as representative of the Southern Pacific Company?

A. That is my understanding.

Q. You have been questioned about an endorsement appearing on the back of note No. 6, namely, "Without recourse", then a signature, and underneath the words "Acting Secretary of the Treasury", and a similar endorsement on note No. 5. Is there any such endorsement on any of the subsequently maturing fourteen notes?

A. No, sir.

Q. The endorsements on the subsequently maturing notes are of payments made on account of the note and interest?

A. On account of the notes.

Q. Let us take up the endorsements on note No. 7, which, I
1894 believe, is the note with reference to which the check that you have endeavored to fill out and state to the examiner was drawn?

A. Yes, sir; it is.

Q. Now, will you please read into the record, as an example of the character of the endorsements, the endorsement on this note No. 7?

A. "Interest paid to August 1, 1899, $44,109.54.
"Interest paid to February 1, 1900, $44,109.54.
"Interest paid to August 1, 1900, $44,109.54.
"Interest paid to February 1, 1901, $44,109.54.

"Under authority of an act of Congress approved March 3, 1901, $9,260.57 interest from February 1 to March 11, 1901, has been paid on this note by Treasury warrant No. 3431.

"Mch. 11, 1901.

"Under authority of an act of Congress approved March 3, 1901, $1,366,442.43 principal has been paid on this note by Treasury warrant No. 3431.

"March 11, 1901.

"Interest paid to August 1, 1901, $18,655.50.

"Credit on principal balance found due by settlement July 31, 1901, $432,895.93.

"Interest paid to February 1, 1902, $17,119.46.

1895 "Credit on principal, balance found due by settlement February 1, 1902, $222,552.49.

"Interest paid to date of maturity (Aug. 1, 1902), $13,781.17.

"Part payment of interest was by settlement of transportation account to Aug. 1, 1902, balance by cash, cash deposited with asst. treasurer U. S., New York, N. Y., N. Y. C. D. No. 2263.

"$918,744.93 balance of principal due Aug. 1, 1902, paid by cash deposited with asst. treasurer U. S., New York, N. Y., C. D. No. 2262."

By Mr. BLAIR:

Q. Mr. Van Deventer, I see on the note No. 7, maturity date August 1, 1902, among the endorsements the following:

"Under authority of an act of Congress approved March 3, 1901, $1,366,442.43."

Will you subtract that from the total amount of interest as stated in Exhibit C, namely, $1,496,090.41, and tell me what the difference is?

A. $129,647.98.

Q. Now, divide that sum by fourteen.

A. $9,260.57.

Q. That is, the quotient is $9,260.57?

1896 A. Yes, sir.

Q. Now, look on the photographic account sheets of the Government and see if you do not find $9,260.57 appearing as a credit on each of the fourteen notes, in succession.

A. I do.

Q. I think you have explained about the disposition of the bonds received back by the Southern Pacific Company on the payment of these notes to the Government, but let me see if I understand that. Those bonds, when they were returned to the Southern Pacific Company, were sold from time to time?

A. They were.

Q. And the proceeds credited to the Central Pacific Company?

A. Yes, sir.

Q. And any balance—that is, any difference between the proceeds and the amount paid on these notes—was charged to the Central Pacific?

A. Yes, sir.

Q. And the bonds which were sold were the bonds which bore the guarantee of the Southern Pacific Company?

A. They were.

Q. And they are now outstanding with the guarantee of
1897 the Southern Pacific Company upon them?

A. Yes, sir; they are.

Q. My attention has been called to your answer in respect to Mr. Chambers, that he was to collect for services rendered by the Southern Pacific Company. Did you say to collect from whom?

A. I intended to say from the Government.

Q. Yes. I thought you did.

Recross-examination by Mr. McCLENNEN:

Q. The guarantee to which you had reference in your last answer as to a guarantee, was this same guarantee that is engraved on the back of the bonds?

A. Yes, sir.

Q. To which you have referred in your earlier testimony?

A. Yes, sir.

Q. What was Mr. Chambers' official position?

A. We called him an agent of the Southern Pacific Company.

Q. He is now dead?

A. He is dead; yes, sir.

1898 Q. Did he have any work to do except to collect for Government transportation?

A. I do not know, sir.

Q. His services connected with the payment of these notes to the Government consisted merely of receiving from some one in Washington the note which you had previously covered by a check handed to the assistant treasurer or his representative here in New York?

A. The taking up of the note, the delivery to him of the collateral, and he, in turn, bringing it over here and delivering it to me.

Q. That is, the service he performed was purely that of a trusted messenger, so far as that was concerned?

A. So far as that was concerned, yes.

(Witness excused.)

Mr. BLAIR. Counsel for the defendants puts in evidence the report of the United States Pacific Railway Commission of December 1,

1887, and a message of the President of the United States—Grover Cleveland—transmitting the same, January 7, 1888, 50th Congress, first session, the same being contained in volume 2, Senate Executive Documents, first session, 50th Congress, 1887–1888.

Mr. McCLENNEN. It is agreed by counsel for both parties
1899 that this report and the President's letter of transmittal may be referred to in the original printed documents without being copied into the record.

(The documents referred to were received and marked "Defendants' Exhibit No. 31, April 15, 1915.")

Mr. BLAIR. Also Senate Report No. 293, 51st Congress, first session, submitted February 17, 1890, to accompany S. 2680, being a report from the Committee on the President's Message, transmitting report of the Pacific Railway Commission; especially that part thereof beginning with page 25 of the report relating to the Central Pacific Railroad Company, being pages 25 to 78, inclusive, of said report.

I suppose the same stipulation may be understood in respect to the waiver of the necessity of copying the original printed documents into this record.

Mr. McCLENNEN. Yes. The petitioner objects to the introduction of this report as incompetent, immaterial, and irrelevant, and objects to the purported statements of facts contained in it as proof of those facts on the ground that they are hearsay.

(The documents referred to were received and marked "Defendants' Exhibit No. 32, April 15, 1915.")

1900 Mr. BLAIR. Also, Senate Report No. 830, 53rd Congress, third session, submitted January 28, 1895, from the Committee on Pacific Railroads, entitled "Partial report", especially that part thereof relating to the Central Pacific Railroad Company, pages 91 to 108, inclusive, of said report.

Mr. McCLENNEN. Petitioner makes the same stipulation and the same objection to Exhibit 33 as appears above to Exhibit 32.

(The document referred to was received and marked "Defendants' Exhibit No. 33, April 15, 1915.")

Mr. BLAIR. Counsel for the defendants puts in evidence also House of Representatives Report No. 1290, 53rd Congress, second session, submitted by Mr. Reidy, from the Committee on Pacific Railroads, July 21, 1894, to accompany H. R. 7798.

Mr. McCLENNEN. The petitioner makes the same stipulation and the same objection to this as made before, as above stated, to Exhibit No. 32.

(The document referred to was received and marked "Defendants' Exhibit No. 34, April 15, 1915.")

Mr. BLAIR. The defendants also put in evidence Senate Report No. 778, 54th Congress, first session, submitted May 1, 1896, by Mr.

Gear, from the Committee on Pacific Railroads, to accompany
1901 S. 2894, and in connection with this offer the defendants put in evidence a copy of S. 2894, referred to in said report, duly certified by James M. Baker, Secretary of the Senate of the United States, under his seal, the offer including the certificate.

(Senate Report No. 778 was received and marked "Defendants' Exhibit No. 35, April 15, 1915.")

(The copy of S. 2894 was received and marked "Defendants' Exhibit No. 36, April 15, 1915", and will be found in the volume of defendants' exhibits.)

Mr. McClennen. The petitioner makes the same stipulation and the same objection as to Exhibit No. 35 as that made before, as stated above, to Exhibit No. 32.

Mr. Blair. The defendants put in evidence House of Representatives Report No. 1497, 54th Congress, first session, submitted April 25, 1896, by Mr. Powers, from the Committee on Pacific Railroads, to accompany H. R. 8189.

Mr. McClennen. The petitioner makes the same stipulation and the same objection as made to Exhibit No. 32.

(The report referred to was received and marked "Defend-
1902 ants' Exhibit No. 37, April 15, 1915.")

Mr. Blair. The defendants also put in evidence a certified copy of H. R. 8189, referred to in said report, with the certificate attached thereto of South Trimble, Clerk of the House of Representatives.

(The certified copy of H. R. 8189 was received and marked "Defendants' Exhibit No. 38, April 15, 1915", and will be found in the volume of defendants' exhibits.)

Mr. Blair. The defendants also put in evidence Senate Report No. 20, 55th Congress, first session, submitted April 1, 1897, by Mr. Gear, from the Committee on Pacific Railroads, to accompany S. 119.

Mr. McClennen. The petitioner makes the same stipulation and the same objection to this Exhibit No. 39 as heretofore made to Exhibit No. 32.

(Senate Report No. 20 was received and marked "Defendants' Exhibit No. 39, April 15, 1915.")

Mr. Blair. The defendants also put in evidence a certified copy of S. 119, together with the certificate attached of James M. Baker, Secretary of the Senate of the United States.

1903 (The certified copy of S. 119 was received and marked "Defendants' Exhibit No. 40, April 15, 1915", and will be found in the volume of defendants' exhibits.)

Mr. Blair. The defendants put in evidence Senate Document No. 61, 54th Congress, second session, presented by Mr. Gear, the same

being a communication from C. P. Huntington, transmitting a copy of a lease by the Central Pacific Railroad to the Southern Pacific Company and amendments thereof to date, including the amendment of 1894. The letter referred to in the preceding offer reads as follows:

"HOTEL NORMANDIE,
Washington, D. C., January 8, 1897.

"DEAR SIR: As heretofore requested by you, I send herewith a copy of the lease of the Central Pacific Railroad to the Southern Pacific Company and amendments thereto to date, viz:

"Original lease, February 17, 1885.

"Modification of lease, January 1, 1888.

"Modification of lease, December 7, 1893.

"Modification of lease, March 22, 1894.

"I remain, yours, truly,

"C. P. HUNTINGTON.

1904 "Honorable J. H. GEAR,
"*Chairman Railroad Committee,*
"*United States Senate, Washington, D. C.*"

The lease and amendments are those which are set forth as an exhibit to the petition in this case.

(The document referred to was received and marked "Defendants' Exhibit No. 41, April 15, 1915.")

Mr. BLAIR. The defendants put in evidence Senate Document No. 227, 56th Congress, second session, being a letter of May 12, 1900, from the Secretary of the Treasury, L. J. Gage, relating to the question of interest upon certain allowed claims for transportation services, and so forth, being a copy of the letter annexed to the answer of the defendants in this case as Exhibit C, and appearing at page 28 of said answer.

It is stipulated that for the contents of said letter reference may be made to said Exhibit C to the answer of the defendants in this case.

(The letter referred to was marked "Defendants' Exhibit No. 42, April 15, 1915.")

Mr. BLAIR. The defendants put in evidence also House of Representatives Document No. 660, 61st Congress, second session, the same being a letter from the Acting Secretary of the Treasury, transmitting a copy of a communication from the Secretary of War, submitting an estimate of deficiency appropriation for transporation of the Army and supplies, especially the portion thereof on page 2, giving as one of the causes of deficiency the payment of the Southern Pacific indebtedness and the cessation of crediting of transportation charges against that indebtedness, the letter of said Acting Secretary being dated February 4, 1910.

1905

(The document referred to was marked "Defendants' Exhibit No. 43, April 15, 1915", and will be found in the volume of defendants' exhibits.)

Mr. McClennen. Petitioner makes the same stipulation and the same objection as to Exhibit 43 as heretofore stated to defendants' Exhibit No. 32.

Mr. Blair. The defendants also put in evidence a certified copy of Senate bill No. 3522, 54th Congress, second session, introduced in the Senate January 13, 1897, by Mr. Gear, and reported January 22, 1897, with amendments, together with certificate attached thereto signed by James M. Baker, Secretary United States Senate.

(The bill referred to was received and marked "Defend-
1906 ants' Exhibit No. 44, April 15, 1915", and will be found in the volume of defendants' exhibits.)

Mr. Blair. Defendants also put in evidence certified copy of House of Representatives bill No. 3750, 55th Congress, first session, introduced in the House of Representatives July 12, 1897, by Mr. Hepburn, and referred to the Committee on Pacific Railroads, together with certificate attached thereto signed by South Trimble, Clerk of the House of Representatives.

(The bill referred to was marked "Defendants' Exhibit No. 45, April 15, 1915", and will be found in the volume of defendants' exhibits.)

(Whereupon an adjournment was taken until to-morrow, Friday, April 16, 1915, at eleven o'clock a. m.)

1907 TWENTY-THIRD DAY.

Room 2506, 165 Broadway,
New York City, April 16, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pacific Company.

1908 Henry Ruhlander was called as a witness on behalf of the defendants, and being duly sworn, testified as follows:

Direct examination by Mr. Blair:

Q. State your residence, please, Mr. Ruhlander.

A. 15 East 48th Street, New York City.

Q. What is your occupation?

A. Banker.

Q. Are you a member of the firm of Speyer & Company?

A. I am.

Q. Is that the same firm of bankers which participated in the set
tlement in 1898 and 1899 of the indebtedness of the Central Pacifi
to the United States?

A. Yes; the same.

Q. And the same firm of bankers which participated in the read
justment of the affairs of the Central Pacific Railroad Company
about that same time?

A. Yes.

Q. Those were large transactions, even for such a house as Speye
& Company, were they not?

A. Yes.

1909. Q. You were connected with the firm at that time?

A. I was.

Q. In connection with the readjustment of the affairs of the Centra
Pacific, did Speyer & Company have occasion to prepare a plan o
readjustment?

A. They did.

Q. You were asked to bring with you the original plan of readjust
ment. Have you done so?

A. I have.

Q. Will you please produce it and exhibit it to counsel?

A. Here it is.

Mr. McCLENNEN. Is this the same text as the one set out in th
answer?

Mr. BLAIR. Yes.

By Mr. BLAIR:

Q. This plan of readjustment was actually carried out, Mr. Ruhlan
der, in accordance with its terms?

A. Yes.

Q. Resulting in the organization of what we call the new company
the Central Pacific Railway Company?

A. That is correct.

1910 Q. And the issuance of its four per cent refunding bonds an
its three and a half per cent mortgage bonds?

A. Yes.

Q. And the acquisition of the common stock of the old Centra
Pacific Railroad Company by the Southern Pacific Company in ex
change for its stock and twenty-five per cent in bonds?

A. Yes.

Q. And the other conditions of the plan were carried out?

A. Yes; the plan was carried out.

Q. Was this plan of readjustment preceded by negotiations and conferences?

A. Yes, sir.

Q. With what interests?

A. There were very many interests. There was the Government, in the first instance; there were the bondholders for various issues, the five per cent bondholders; there were the stockholders who were represented by two different interests, the so-called American company and the so-called London committee, of which Mr. Banbury, a member of Parliament, was the chairman.

Q. This plan of readjustment was preceded by negotia-
1911 tions and conferences with representatives of the Southern Pacific Company?

A. It was.

Q. Were these negotiations of an extended character—that is, did they cover a considerable period of time?

A. They did. Certainly a matter of such large volume as that would take considerable time to whittle into shape.

Q. Would it be safe to say that it extended over a period of many months?

A. Yes.

Q. Before the plan was completed?

A. Before the plan was finally agreed upon.

Q. Or before the plan was drawn up in the form in which it appears as of date, February 8, 1899?

A. Yes; that is correct.

Q. Before that period?

A. Yes.

Q. What was the occasion of this plan of readjustment? What was the necessity of the readjustment of the affairs of the Central Pacific Railroad Company?

Mr. McCLENNEN. The petitioner objects to the question as call-
ing for a statement of opinion and a statement of facts as
1912 to part of which the witness, in the nature of things, can not have personal knowledge.

By Mr. BLAIR:

Q. You may answer.

A. Primarily the settlement with the United States of the indebtedness of the company.

Q. Did Speyer & Company have any negotiations or conferences with representatives of the United States Government prior to what is known as the settlement agreement, the agreement made with the United States?

A. Yes.

Q. Were they of an extended character?

A. It took quite some time. I can not just tell how much you mean by an extended time, but probably a month or so, a month or two months.

Q. Were these two sets of conferences and negotiations going on concurrently?

A. Yes.

Q. With reference to each other?

A. Yes; absolutely. It seems to me, in the necessity of the case, they would have to go on together.

Q. And each had what common object in view?

1913 Mr. McCLENNEN. Petitioner objects to the question as calling for an opinion and for a matter which is immaterial.

The WITNESS. The adjustment of the indebtedness to the Government and the rearrangement of the debt of the Central Pacific Railroad Company, and partly an exchange of the security with the Southern Pacific Company's securities.

Mr. BLAIR. Counsel for the defendants puts in evidence a copy of the plan and agreement of readjustment, which is Exhibit B in the answer.

Mr. McCLENNEN. The petitioner, reserving the right to object to this agreement, stipulates that the copy of it contained in Exhibit B of the answer shall have the same force and effect as the original plan of readjustment, in evidence.

(The copy of the plan of readjustment was received and marked "Defendants' Exhibit (Ruhlander) No. 45–a, April 15, 1915.")

Mr. BLAIR. The witness is yours.

1914 Cross-examination by Mr. McCLENNEN:

Q. Mr. Ruhlander, what you have before you is one of the original executed instruments?

A. Correct.

Q. At the front of the original instrument there is a printed circular dated February 20, 1899?

A. Yes.

Q. Was that circular bound up with the original before execution?

A. Yes.

Q. Following that circular of one page is what is styled "Central Pacific Railroad Company. Plan of readjustment", which by comparison appears to be in the language of Exhibit B of the defendants' answer in this case, and in the original that extends through page 13?

A. Yes.

Q. Following that on the original before you is a blank page, 14. Then on page 15 begins what is entitled "Central Pacific Railroad Company. Readjustment agreement"?

A. Yes, sir.

Q. And that extends to the end, on page 26?

1915 A. Yes.

Q. And the only signatures in execution of this are those at the end of the whole instrument, on page 26?

A. Yes.

Q. Will you read into the record the names of the parties who executed the instrument?

A. Do you want me to do that?

Q. Yes; just read them right from that copy.

A. They are as follows: Speyer & Company; Speyer Brothers; Laz, Speyer Ellissen; Deutsche Bank; Teixeira de Mattos Brothers; Speyer & Co., depositary.

Q. The circular which constitutes page 1 of this original instrument is dated February 20, 1899?

A. Yes.

Q. On what date, as nearly as you can fix it, were the signatures affixed to this instrument?

A. On what date?

Q. Yes.

A. I should say during the month of February; I can not make a positive statement, but I should say approximately.

Q. And undoubtedly, I take it, subsequent to the seventh day of February, the document being dated February 8th?

1916 A. I should say that was so.

Q. Did you personally have to do with the negotiations which led up to the making of this readjustment agreement dated February 8th?

A. I was consulted at the time by my chief, but I did not take part in the negotiations with the interests.

Q. Who were the individuals of Speyer & Company or Speyer & Company's offices, or who was the individual who dealt with the other parties in interest?

A. Mr. James Speyer.

Q. Is he living?

A. Yes.

Q. Where is he now?

A. He is a resident of New York City.

Q. Did you meet any representative of the United States Government in these negotiations?

A. I met them and shook hands with them once, and that is about all I had to do with it.

Q. Were you personally at any negotiations between any representative of the Government and others in interest?

A. No.

Q. You have no personal knowledge—using the word
1917 "knowledge" in its precise sense—have you, that this plan
of readjustment was seen by any representative of the United
States Government?

A. I am sure it was.

Mr. McCLENNEN. I should like to ask to have that stricken out as
not responsive.

By Mr. McCLENNEN:

Q. Did you ever mail this plan of readjustment to any representa-
tive of the United States Government?

A. Did I personally ever mail it?

Q. Yes.

A. I would not be able to remember that, whether I did or did not.

Q. Did you ever see it handed to any representative of the United
States Government?

A. No; I can not say that I did; no.

Q. Then, disregarding what your beliefs may be on the subject, is
it not a fact that you have no direct personal knowledge that any rep-
resentative of the United States Government saw the plan of read-
justment—using "knowledge" to exclude what may have been told
you?

1918 A. I am absolutely sure they did, because the representatives
of the Government was frequently at our office when we were
discussing the plan.

Mr. McCLENNEN. Petitioner moves to strike that answer out as not
responsive.

By Mr. McCLENNEN:

Q. You appreciate, do you not, the distinction between firm convic-
tions and absolute knowledge from your own eyesight?

A. I certainly do.

Q. Using "knowledge" in the strict sense, is it not true that you
have no knowledge that any representative of the United States
Government saw the plan of readjustment?

A. Yes; I am positive that they did see it. That is all I can tell
you. When you ask me whether I saw them hand it to them, I
did not.

Mr. McCLENNEN. The petitioner moves to strike out the answer as
not responsive.

By Mr. McCLENNEN:

Q. Do you know what individuals purporting to represent the
United States Government conducted or participated in the negotia-
tions with Speyer & Company or the representatives of the Central
Pacific Railroad Company?

1919 A. My recollection is—it is a long while ago—that the first conference took place at Washington. I was not present, so that I do not know who represented the Government.

Q. In any later negotiations do you know who represented the Government?

A. I know Mr. Root had something to say about it as counsel for the Government.

Q. That is, Mr. Elihu Root?

A. Yes.

Q. Do you know of any one else who had anything to do with it as representing the United States?

A. Why, I think the records will show that it was in the hands of a commission at the time, representing the United States Government; and while I will not be positive, my opinion is that Mr. Bliss, Mr. Lyman J. Gage, and some third party—I can not recall them for the moment—represented them.

Mr. BLAIR. The Attorney General?

The WITNESS. Attorney General Griggs.

By Mr. MCCLENNEN:

Q. Did you see Mr. Root when in negotiation on this subject?

1920 A. I saw him in our office, but I took no part in the negotiation.

Q. Did you see Mr. Bliss, Mr. Gage, or Mr. Griggs?

A. No.

Q. You never saw a copy of this plan of readjustment in the hands of Mr. Root?

A. No.

Q. When, as nearly as you can fix it, did the negotiations which led to the execution of the agreement between the United States and the Central Pacific Railroad and Speyer & Company, dated February 1, 1899, copy of which constitutes Exhibit A of the answer, begin?

A. I should say, in a general way, several months before that time. When you pin me down to how long, I can not give you any definite answer.

Q. You mean something more than one and less than six, perhaps?

A. That is about it.

Q. And the negotiations in which Mr. Root was engaged when you saw him at the office of Speyer & Company were the negotiations which resulted in the execution of that agreement of February 1?

1921 A. I understood that Mr. Root was acting as counsel for the commission, and I do not know whether he had anything to do with the working of the plan itself, the mapping out of it, or whether

he merely looked after the details from the legal point of view, after the principles of the plan had been agreed upon.

Q. I see. That is, he may have been merely——

A. He may have been merely counsel.

Q. And put into definite legal shape——

A. And put into definite legal shape what had been agreed upon with the United States Government.

Q. Who were the counsel for Speyer & Company in the matter of this same agreement of February 1, 1899?

A. May I look at the agreement?

Q. Certainly.

A. The firm names have since been changed. At that time it was Stewart, Guthrie & Steele, which is no longer in existence, and Evarts, Choate & Beaman, no longer in existence.

Q. Do you know who, of those respective firms, had to do with the matter?

A. Yes.

Q. Who?

1922 A. Messrs. Beaman and Steele.

Q. That is, Mr. Beaman, of Evarts, Choate & Beaman, and Mr. Steele, of Stewart, Guthrie & Steele?

A. Yes.

Q. Mr. Beaman is no longer living?

A. He is dead.

Q. And Mr. Steele?

A. He is a partner of J. P. Morgan & Company now.

Q. Who were the counsel for the Central Pacific Railroad Company or the Southern Pacific Company in those negotiations?

A. I should say that Mr. Charles H. Tweed was the general counsel and he looked after matters. I do not know whether they had employed any special counsel in this connection, but he was their general counsel.

Q. Who were the individuals connected with those two companies other than counsel, who were the negotiators in these transactions?

A. I should say on behalf of the company the leading spirit was the late C. P. Huntington.

Q. When was the text of this plan of readjustment, dated February 8, 1899, got into final shape?

A. I could not give you the exact date, but approximately at that time.

1923 Q. In the course of the negotiations there were many different methods discussed of arriving at the results sought, were there not?

A. Yes, sir.

Redirect examination by Mr. BLAIR:

Q. Mr. Ruhlander, this plan of readjustment about which you ve been testifying and which we have offered in evidence as pro- ced by you is annexed as a part of a readjustment agreement, is not?

A. Yes.

Q. And that readjustment agreement is signed and executed by at are called in the plan the syndicate managers, or something like it, is it not?

A. The readjustment managers.

Q. The readjustment managers. And the readjustment agreement what you might call the agreement between the underwriters of the an, is it not?

A. No; that is an agreement between the security holders who de- sited their securities to enable the readjustment managers to carry out the plan.

924 Q. It is not part of the plan of readjustment itself except to the extent to which you have stated?

A. That is right.

(Witness excused.)

Mr. BLAIR. Counsel for the defendants put in evidence the articles f association of the Central Pacific Railway Company dated July , 1899, an amendment of April 2, 1900, and amendment of Feb- ary 24, 1912.

It is stipulated that the printed copy may be put in evidence in eu of the original.

(The pamphlet referred to was received and marked "Defendants' Exhibit No. 46, April 16, 1915", and will be found in the volume of efendants' exhibits.)

Mr. BLAIR. Counsel for defendants put in evidence the deed of onveyance of July 29, 1899, from the Central Pacific Railroad Com- any to the Central Pacific Railway Company. It is agreed that in eu of the original there may be copied into the exhibits the copy of ich deed of conveyance found in the Union Pacific merger record, olume 8, page 3834.

(The copy of the deed of conveyance referred to was received and arked "Defendants' Exhibit No. 47, April 16, 1915", and will be found in the volume of defendants' exhibits.)

925 Mr. BLAIR. Counsel for defendants put in evidence in- denture dated August 1, 1899, of the Southern Pacific Com- any to the Central Trust Company of New York, subordinating the outhern Pacific Company's lease of the Central Pacific Railroad ompany's property to the lien of the first refunding mortgage of he Central Pacific Railway Company.

It is agreed that in lieu of the original there may be copied into the record the copy of this indenture to be found in the Union Pacific merger record, volume 8, page 3852.

(The indenture referred to was received in evidence and marked "Defendants' Exhibit No. 48, April 16, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. Counsel for defendants put in evidence a similar indenture dated August 1, 1899, of the Southern Pacific Company to the Central Trust Company of New York, subordinating its lease of the Central Pacific Railroad Company's property to the lien of the mortgage of the Central Pacific Railway Company securing its issue of three and a half per cent bonds.

It is likewise stipulated that, in lieu of the original, there may be copied into the exhibits the copy of said indenture to be found
1926 in the Union Pacific merger record, volume 8, page 3855.

(The indenture referred to was received in evidence and marked "Defendants' Exhibit No. 49, April 16, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. In support of its pleas of res adjudicata and estoppel of record contained in the answer, and also as conclusive evidence of the existence at the time of the Union Pacific merger in 1901 of actual and vigorous competition between the so-called Ogden route and the Sunset line or the Sunset-Gulf route, and of the absence of motive or power in the Southern Pacific Company to prevent such competition, counsel for the defendants now put in evidence the record in the suit of the United States versus the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and various other defendants whose names will appear from the document offered in evidence, said suit being numbered 993 in equity in the Circuit Court of the United States for the District of Utah, viz:

Original petition of the United States of America.

Answer of the defendants Edward H. Harriman, Southern Pacific Company, joint and several answer of the defendants
Union Pacific Railroad Company, Oregon Short Line Rail-
1927 road Company, and Oregon Railroad & Navigation Company; joint and several answer of the defendants William A. Clark and of the San Pedro, Los Angeles & Salt Lake Railroad Company; separate answer of the defendants the Farmers Loan & Trust Company, Henry C. Frick, the Atchison, Topeka & Santa Fe Railway Company, Henry H. Rogers, James Stillman; and the joint and several answer of Jacob H. Schiff and Otto H. Kahn, and the replications of the United States to the several answers, being all the answers filed in the case.

The opinion and decree of the United States Circuit Court for the District of Utah in said cause, of date June 24, 1911, and reported in the 188th Federal Reporter, page 102, and following.

The opinion and decree of the United States Supreme Court on appeal of the said case, rendered December 2, 1912, reported in volume 226 of the United States Reports at page 61 and following.

The supplemental opinion and decree of the United States Supreme Court rendered January 6, 1913, upon the motion as to form of mandate in said cause, reported in 226 U. S. Reports, page 470 and following.

The decree entered in the District Court of the United
1928 States for the District of Utah in said cause, dated February 12, 1913.

The final decree entered in the District Court of the United States for the District of Utah in this case, dated June 30, 1913.

The brief of facts filed in the United States Supreme Court on behalf of the United States of America, by George W. Wickersham, Attorney General, Frank B. Kellogg and C. A. Severance, special assistants to the Attorney General; and the brief of law of the same party by the same counsel.

Mr. McCLENNEN. The petitioner objects to the evidence offered, on the ground that it is immaterial.

Mr. BLAIR. It is stipulated, subject to this objection, that the pleadings in said cause offered need not be produced in the form of copies certified by the clerk of the court, but may be copied into this record from the printed record in the Union Pacific merger suit.

It is further stipulated that the opinion and decree of the United States Circuit Court of June 24, 1911, need not be copied into the transcript, but may be referred to as reported in the 188th Federal Reporter, page 102 and following; and, further, that the
1929 opinions and decrees of the United States Supreme Court included in the offer of the record need not be copied into the record, but may be referred to in the officially printed volume of the reports of said court.

The production of a certified copy of the decree of the District Court of the United States for the District of Utah of February 12, 1913, and the final decree of June 30, 1913, is waived, and the printed copies produced may be received in lieu of such certified copies.

It is mutually agreed that either party may supply any omissions in the pleadings or decrees or orders in said court which may not have been included in the foregoing offer.

It is stipulated further that the briefs offered in evidence need not be copied among the exhibits in this case, and that in event of appeal to the Supreme Court of the United States the briefs forming part

of the record of said court may be referred to, and that the copies of these briefs need not be copied into the transcript of appeal.

(The documents offered in evidence, as above stated, were marked collectively, "Defendants' Exhibit No. 50, April 16, 1915", and with the exception of those not to be copied, according to the terms of the above stipulations, will be found in the volume of defendants' exhibits.)

1930 HUGH NEILL was recalled as a witness on behalf of the defendants, and having been previously sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. Mr. Neill, what is your connection with the Pacific Mail Steamship Company?

A. I am secretary of that company.

Q. Did you hold that office in May, 1914?

A. I did.

Q. Were there any resolutions adopted by the directors of the Pacific Mail Steamship Company about that time, in respect to a change in the business of that company after the opening of the Panama Canal?

A. There was a resolution.

Q. What was the date of the meeting at which the resolution was passed?

A. At a meeting of the board of directors held May 7, 1914, such a resolution was passed.

Q. Was there more than one resolution? Was there a resolution in regard to sending out a letter?

A. There was a second resolution adopted with reference

1931 to a letter to be sent out to the stockholders.

Q. Have you produced a certified copy of the second resolution to which you have referred, about the distribution of a letter?

A. I have prepared a certified copy of that resolution.

Q. Have you annexed to it as an exhibit a copy of the letter referred to in the resolution?

A. I annexed to the resolution, marked "Exhibit A," a printed copy of the letter referred to in the resolution itself.

Q. The resolution refers to a meeting of the stockholders. Have you annexed as an exhibit a true copy of the notice of the meeting of the stockholders which was sent out?

A. I annexed to the resolution, marked "Exhibit B", a copy of the printed notice of the meeting that was forwarded by United States mail to each stockholder of the company prior to the meeting.

Q. Have you annexed also a copy of the blank form of proxy ich was sent out to each stockholder?

A. I have annexed, marked "Exhibit C", a copy of the form of proxy that was sent out to each stockholder.

32 Q. Were the letter to which you refer, the notice of the stockholders' meeting, and the proxy, all enclosed at the same ne to the stockholders?

A. They were all enclosed in the same envelope.

Q. Did the envelope also contain the printed copy of the set of solutions of May 7th?

A. It did.

Q. Have you also produced a certified copy of the minutes of the eeting of the stockholders held pursuant to the notice?

A. Yes, sir; I have produced a certified copy of the minutes of e stockholders' meeting held May 27, 1914, it being a meeting that as held pursuant to the notice.

Q. Were you present at that meeting?

A. Yes; I was.

Q. And you acted as secretary?

A. I acted as secretary of the meeting.

Q. And you were present at the meeting of the directors and rved as secretary to that meeting?

A. I was present and served as secretary.

Q. And these papers which you have produced and certified to e true and correct copies of the originals?

A. They are.

33 Mr. BLAIR. Counsel for the defendants put in evidence the documents just identified by the witness, namely, the certified pies of the two resolutions adopted by the board of directors of the acific Mail Steamship Company May 7, 1914, together with the hibits attached thereto, including the circular letter dated New ork, May 7, 1914, signed "Julius Kruttschnitt, President", the no-ce of meeting, the blank form of proxy, and the certified copy of ie resolution of the stockholders of May 27, 1914.

(The documents above referred to were received in evidence and arked "Defendants' Exhibit (Neill) No. 51, April 16, 1915", and ill be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Mr. Neill, can you tell us the amount of stock at such meeting f stockholders which was held by the Southern Pacific Company?

A. The Southern Pacific Company was represented at that meet-ng by 110,755 shares, which were voted by its proxy.

Q. Will you please state the amount of stock other than that wned by the Southern Pacific Company which was represented

1934 at that meeting, whether by proxy or otherwise; or, if yo
have got it separately, put the two together.

A. At the commencement of the meeting there were 30,820 share
of stock represented in person or by proxy, those shares being owne
by stockholders other than the Southern Pacific Company.

Q. By what vote was the resolution of the stockholders approv
ing the recommendation of the board of directors adopted?

A. The resolution about the readjustment of the business wa
adopted by a favorable vote of 135,250 shares.

Q. What was the number of shares voting against it?

A. The number of shares voting against it was 6,340. There wa
present one stockholder owning 150 shares who preferred not to ca
a vote.

Q. How much stock not owned by the Southern Pacific Compan
voted for the resolution?

A. 24,495 shares.

Q. How much stock not owned by the Southern Pacific Compan
voted against the resolution?

A. 6,340 shares.

Cross-examination by Mr. McCLENNEN:

1935 Q. Of those 24,495 shares, were there any shares in whi
the Southern Pacific Company or any of its officers had an
interest?

A. Some of those shares were owned by directors of the Pacif
Mail Steamship Company. Some of them were owned by person
who had not connection with the Southern Pacific Company. That
is as far as I can answer your question.

Q. If you exclude those classes that you have just mentioned, d
you know how many shares there would be left of that 24,495?

A. I have made no compilation of that. It would require som
time to do it.

Q. Do you know enough of the matter to know whether it woul
be a large or a small part?

A. A comparatively small number of shares. The holdings of th
directors were not large.

Q. I am afraid we have spoken at cross purposes. What I asked yo
was whether, excepting that held by the directors or those connecte
with the Southern Pacific Company in some way, the remainin
number would be large or small.

A. The remaining number would be large.

Q. I was afraid you misunderstood me. To put it again, t
1936 make it perfectly clear: The more substantial part of the 24,49
shares is entirely disconnected with the Pacific Mail Steamsh

Company or the Southern Pacific Company, or persons interested in either as officers or employees?

A. That is entirely correct.

(Witness excused.)

Mr. BLAIR. Counsel for the defendants put in evidence certified copies of the application of the Southern Pacific Company to the Interstate Commerce Commission, under the provisions of section 5 of the act to regulate commerce, as amended by section 11 of "An act to provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone", approved August 24, 1912, in connection with the operation of the Pacific Mail Steamship Company, filed with said Interstate Commerce Commission February 18, 1914, under its docket number, 6605, and an amendment of said application filed December 7, 1914, and a further amendment of said application filed May 21, 1914, and a third amendment to said application filed April 2, 1915.

Counsel for the defendants also put in evidence the report of the Interstate Commerce Commission upon said application.

1937 It is stipulated and agreed that the reports of the commission just put in evidence need not be put into the record as exhibits, but may be referred to in the officially printed and bound volumes of reports of the Interstate Commerce Commission, with the same effect as if the same had been incorporated in the record.

(All of the above documents referred to were received and marked "Defendants' Exhibit No. 52, April 16, 1915".)

(Whereupon, an adjournment was taken until Monday, April 19, 1915, at eleven o'clock a. m.)

1938 TWENTY-FOURTH DAY.

ROOM 2506, 165 BROADWAY,
New York City, Monday, April 19, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pacific Company.

1939 EDWARD CHAMBERS was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. HERRIN:

Q. Where do you reside?

A. Chicago.

Q. What is your occupation?

A. I am vice president of the Atchison, Topeka & Santa Fe Rai way Company—the Santa Fe Railway system—and in charge of i traffic.

Q. How long have you been with that company?

A. Thirty-six years.

Q. Did you have any railroad experience before you entered t employ of the Santa Fe?

A. No, sir.

Q. What has been, generally, your duty and responsibility duri your employment, beginning from the first and coming down, in general way?

A. I began with the Santa Fe at Pueblo, Colorado, in the stati service, in 1879, and remained there until 1885. I served in all t positions at the station except agent.

1940 From 1885 to 1887 I was local agent for the Santa Fe at S Diego, California, and had charge of its depot business, u yards, and the commercial business in the city.

From 1887 to 1894 I was local agent at Los Angeles, in charge the depot business and the yards and the commercial business the city.

From 1894 to 1896 I was assistant general freight agent of t Santa Fe lines in southern California.

Q. Covering what lines?

A. Covering the lines south of Barstow, California; approximate 500 miles of rails.

From 1896 to 1905 I was general freight agent for the lines co trolled by the Santa Fe system west of Albuquerque, New Mexi which included their California lines.

At first my jurisdiction covered lines in California only. Afte wards there were added the lines between Albuquerque, New Mexi and Mojave, California, and afterwards there were added to m jurisdiction the lines in northern California known as the San Fra cisco and San Joaquin Valley lines.

Q. That brings you down to 1905.

1941 A. From 1905 until 1913, with headquarters in San Francis I was assistant freight traffic manager of the Santa Fe sy tem. I had charge of the local business of the lines west of Alb querque, New Mexico, and the through business between points the lines west of Albuquerque, and other points on the Santa F system lines and beyond.

From 1913 up to date I have been vice president of the Santa F system, in charge of all its traffic.

Q. Both passenger and freight?

A. Yes, sir.

Q. Outside of your supervision of traffic, have you any duties as to general policy, the construction of lines, or anything like that?

A. I am usually consulted before new lines are constructed or acquired.

Q. How long have you been in position where your views were taken, and you engaged in the conferences which were considering the construction of new lines?

A. As to the western end of the Santa Fe, since 1896; and as to all points on the Santa Fe system, since I become vice president in 1913.

Q. Are you familiar with the lines of railway operated by the Southern Pacific Company?

1942 A. Yes, sir.

Q. You know, generally, that those lines consist of what main lines? You may give them.

A. The line from San Francisco via Sacramento to Ogden and from San Francisco through the San Joaquin Valley via the Coast Line, through Los Angeles to El Paso, and the line from El Paso to Galveston and running to New York; the Texas lines—lines within Texas.

Q. Any lines north of San Francisco?

A. And the line from San Francisco to Portland.

Q. To Portland, Oregon?

A. Yes, sir.

Q. You are familiar with the country served by those lines, are you?

A. Yes, sir.

Q. And have been for a number of years?

A. Yes, sir.

Q. You have frequently been over these lines, have you?

A. Yes, sir.

Q. After the building of the Central Pacific main line connecting from San Francisco to Ogden, what would naturally be the

1943 next step in railroad development or construction to be taken concerning that line?

A. Building feeders for that line through the valleys of northern California.

Q. What, if any, lines southerly from the Central Pacific main line would you regard as feeders?

A. The line south through the San Joaquin Valley, through to Los Angeles, connecting northern and southern California.

Q. How far north would you go for these lines as feeders?

A. The line that is south into the Salinas Valley and north of Sacramento into the Sacramento Valley.

Q. How far north would the line be constructed as a feeder, nat
rally, from Sacramento?

A. As a feeder, up to the Oregon line.

Q. You will remember, as a matter of railroad history, if you
not know personally, that when the Central Pacific main line w
opened in 1869 there was no other transcontinental rail line and th
the first transcontinental line other than the Central Pacific w
formed by the junction of the Santa Fe at Deming, New Mexi
with the Southern Pacific in 1881.

1944 What would you say as to the construction of the line sou
erly from Los Angeles to Deming, which was constructed,
to whether that would be a natural, congruous development of ra
road building as a part of this system of which the Central Paci
main line was a nucleus in the beginning?

A. I think that would be the natural and businesslike move
make, to extend the line from southern California eastward throu
Arizona.

Q. The Texas Pacific line—you know the location of that, do yo

A. Yes.

Q. Extending from Sierra Blanca on the Southern Pacific li
eastward to what point?

A. To Texarkana, Arkansas.

Q. Now, I will remind you, as a historical fact, that the junctio
of the Texas Pacific was made with the Southern Pacific line
Sierra Blanca in 1882. What would you say as to the extension
the Southern Pacific line eastwardly from Sierra Blanca upon th
route it was built upon to Houston, forming connection with th
lines built between Houston and New Orleans?

1945 A. I would say that at that time the natural thing to do a
the business thing for the Southern Pacific to do was to ge
through line between California and New York, and the extension
their line eastward was the desirable thing to do.

Q. Eastward to what point?

A. Well, to New Orleans. New Orleans is where they first e
tended it to.

Q. To some point on the Gulf of Mexico?

A. Yes.

Q. Did the business needs of that country which is served by th
line—which, of course, includes California, the local territory, an
whatever traffic might be gained on that line—did those busine
needs justify the construction of that line at that time?

A. They did. At that time, and for some years afterwards, the At
lantic seaboard territory supplied the manufactured merchandise fo
the entire Pacific coast and took all the Pacific coast products,
great bulk of them, perhaps seventy-five to eighty per cent of the

Q. Was there any other line that could have been built at that time, first, after the construction of the Central Pacific, which would have been more practicable or a better line for railroad pur-
1946 poses or for the service of the public than the Southern Pacific line from Goshen to New Orleans?

A. I think that was the best line that the Southern Pacific could build to serve all their purposes; of course, any through line would have been beneficial.

Q. You spoke of the purposes of the Southern Pacific. My question called for your consideration of the service to the public also. Do you include that?

A. That would include the service to the public.

Q. Do you remember when the Southern Pacific line was opened for operation in 1883?

A. Yes, sir.

Q. Do you remember, generally, what amount of traffic that line obtained, transcontinental traffic, between the Atlantic seaboard and the Pacific coast, as compared with the like traffic served by the Central and Union Pacific and connecting lines?

A. Well, I am not so familiar with what they obtained in 1883, because I was not acquainted with the California business to any great extent at that time, although I was acquainted with the business down over the Southern Pacific lines via Deming and via Mojave, in connection with the Santa Fe.

1947 Q. Do you know whether or not the Sunset line, as we call it, got any considerable amount of transcontinental traffic between the Atlantic coast and the Pacific coast?

A. It did.

Q. It did at first?

A. I think it did at first. In 1885 and afterwards, when I first became acquainted with the California business so as to judge of that, they were getting a very large share of the business between California points and the Atlantic seaboard territory.

Q. You say it had a large share. What other lines took the rest of it in 1885?

A. When I say a large share of that business, I include, of course, the Sunset Route and the route via Ogden to the Atlantic seaboard. The only other route into California in 1885 was the Santa Fe, and they got a small share of the Atlantic seaboard business.

Q. In 1885 the Santa Fe only touched southern California?

A. That is all.

Q. And it entered northern California at what date?

A. It entered northern California by connection over the Southern Pacific rails in 1884.

1948 Q. But with its own line?

A. With its own line in 1899.

Q. So, even before the Santa Fe had its own rails in northern California, it was doing business in northern California by traffic connection with the Southern Pacific?

A. It was.

Q. And it did some considerable business that way, did it not, before it had its own rails?

A. It did.

Q. When you say the Sunset Route had a large share of the business, do you mean as much as half or more of this transcontinental business?

A. You mean of the Atlantic seaboard business?

Q. Of the Atlantic seaboard business with San Francisco and the Pacific coast.

A. Of the westbound Atlantic seaboard business they had considerably more than one-half; probably as high as eighty or ninety per cent of it.

Q. How do you account for their securing eighty or ninety per cent of that business as against the all-rail lines that connected via the Union Pacific at Omaha?

1949 A. The service was very much better via the Sunset Route than via any of the other routes to California.

Q. Can you explain how it was better?

A. It was under a single management between New York and California and had through billing and gave the traffic continuous movement in both directions.

Q. And was it more expeditious as to time?

A. It was more expeditious and more regular.

Q. As a general proposition, I suppose service controls traffic, does it not?

A. Service is the most important factor in the routing of traffic.

Q. It is the controlling factor?

A. Yes, sir.

Q. After this Southern Pacific Sunset-Gulf route obtained the eighty to ninety per cent of this transcontinental traffic, was there a change in that division as between that line and the all-rail lines? If so, how was that brought about?

A. As the service of the all-rail lines via Chicago and St. Louis improved, the traffic was attracted from the Sunset Route to the all-rail lines until finally the all-rail lines got what I would consider a reasonable share of the traffic in their competition with

1950 the Sunset Route.

Q. Did you have anything to do personally with improving the service by the all-rail lines to compete with the Sunset-Gulf line?

A. Yes, sir.

Q. State what that was.

A. It was during my service as local agent at Los Angeles. We made an arrangement with the Erie Railroad to waybill through from New York to the Pacific coast points, and to run through cars wherever it could be done, based on the volume of business received. That gave us just one interchange or one connection, which was at Chicago. The Santa Fe lines at that time extended from Kansas City to Chicago. This arrangement gave us a service that enabled us to start in and compete with the Sunset Route, and gradually work it up to such a point where we could about equal their service.

Q. As to time?

A. As to time, and as to the other things that go to make up service.

Q. About what date was that?

A. That was about 1888. It was 1889 or 1890.

1951 Q. You speak of through billing; that you had an arrangement by which the Santa Fe, which extended from California to Chicago, there connecting with the Erie, which connected New York and Chicago, through-billed the freight. Was that done generally by these all-rail carriers at that time—through billing?

A. No. I think the Erie-Santa Fe arrangement was the first through billing in connection with the all-rail lines.

Q. What was the practice before that by other carriers?

A. The practice before that was for each line to make its own waybill and collect its proportion of the joint rate from the connecting carrier, so that when the freight arrived at its destination you had, except the proportion of the rate for the delivering line, the balance of the charges as advance charges; so that if any overcharge existed in these advance charges, you had to go back to the railroad that caused the overcharge in order to get an adjustment. In the through billing the total rate was used and the total charges extended, and the delivering agent could correct the charges from the destination back to the point of origin.

Q. This local billing was a very cumbersome method apparently?

1952 A. It was a very cumbersome and very unsatisfactory method, because it caused a great delay in the settlement of overcharges.

Q. And that is one subject upon which much friction may arise, if it is not taken care of properly, is it not—the settlement of claims of the shippers?

A. Yes, sir. That was one strong point in favor of the Sunset Route. The delivering agent, whether it was at Los Angeles or an[illegible] point anywhere on the Southern Pacific lines in California,

could adjust any error that was made in the billing with respect to the charges, right back to the point of origin.

Q. How soon, if you remember, did the all-rail lines generally between the Atlantic and Pacific coasts, adopt this practice of through billing such as you put in force on the Erie and the Santa Fe?

A. I think generally about 1900 and afterwards.

Q. Or was it 1890? Was it as late as that—about 1900?

A. I mean, to get them all in. It took quite a long time for all the roads to get adjusted. They came in one after another. I think after the Santa Fe came the route via Ogden and Omaha.

1953 Q. That resulted in an improvement of the all-rail service, of course?

A. Yes, sir.

Q. And did it also result in the diminishing of the proportion of this traffic which was obtained by the Sunset-Gulf route and the taking of a considerable portion of that traffic for the all-rail lines?

A. It did.

Q. What is practically the field of competition now open between carriers where each may serve the same traffic?

A. Do you mean the field that is open to them——

Q. I mean, how can these carriers compete—include everything by which they can compete; any means by which they can compete with each other.

A. The most important feature in the competition between the carriers is the service. That is probably looked after closer to-day than ever before, and the whole country, both east and west bound, as to its competitive traffic, is covered with joint rates that are open to practically all carriers.

Q. The joint rates filed under the law practically cover all possible routes, do they not?

A. Yes, sir.

1954 Q. You said practically all the means was by way of the service or to improve the service. What would you say as to rates? Is that now a possible means of competition—the reduction of rates generally?

A. Generally it is not possible nowadays for one carrier to get any advantage over the other in the making of the rates, because it requires forty to fifty days of publicity before the rates can become effective; that is, where you make a change.

Q. How about the possibility, financially or economically, of reducing these rates generally that are now in force?

A. I would say the rates were down to a level where they can not stand any further reduction without a serious financial embarrassment to the carriers generally.

Q. Is it or is it not a fact that the present level of the transcontinental rates has been in effect for the last decade—ten or more years—without substantial change or material change?

A. Yes.

Q. So the present level has been maintained for that period?

1955 A. The present level of transcontinental rates has been; yes, sir.

Q. The carriers have made some applications to the Interstate Commerce Commission for leave to reduce transcontinental rates as to certain classes of traffic without affecting the intermediate rates, as far as possible. Now, that is an application to reduce rates, is it not, to some extent?

A. The application is practically asking the commission for permission to meet the rates of the water carriers at the terminals without disturbing the reasonable rates at the intermediate points.

Q. But it is a reduction of the through rate, is it not?

A. It is a reduction of the through rate.

Q. And what I wanted to call your attention to was the consideration of that fact in connection with your statement that you could not generally reduce these rates without disturbing the finances of these roads or tending towards their bankruptcy.

A. This is a new condition that confronts us now; with the opening of the Panama Canal the rates of the water carriers have gone lower than they were before, and the level that we had set to

1956 meet the competition before the canal opened has got to be changed; it has got to be lowered in order to meet the existing competition of the water carriers.

Q. But that only affects a small part of the whole traffic of the roads?

A. A small portion; yes, sir.

Q. And it does not amount to a general lowering of all of these rates?

A. No, sir; just the lowering of the rates on traffic that the water carriers carry in large volume.

Q. It is a condition which forces these carriers to either make that reduction or else go out of the business as to these classes of traffic?

A. Yes, sir; that is correct.

Q. You have said that service is the controlling factor as to the routing of traffic. I would like to have you state what service consists of. What was in your mind when you spoke of service?

A. The time en route is the most important point.

Q. Expedition as to time is important?

A. Yes.

Q. Is there anything else going with service, that is a part of it, material to be considered?

1957 A. The receiving and delivering facilities of the carriers a
quite important as factors in the service.

Q. Is there anything else? You spoke of the settlement of clai
of shippers. Has that anything to do with it?

A. That is, I should say, part of the service.

Q. Do you consider that——

A. In fact, the general dealings with the shipper are all includ
in the service.

Q. The service, then, includes the dealings with the shipper co
cerning his shipments?

A. Yes.

Q. That would include the prompt and fair settlement of clai
for damage, and so forth?

A. It includes everything that means money to the shipper.

Q. It means everything in which he is interested?

A. Yes.

Q. How much of a factor is solicitation, in and of itself? Is th
a controlling factor?

A. Solicitation has some bearing on the securing of business, ever
thing else being equal; but it must be backed up by equal
1958 good service as that given by the competitor; otherwise solic
tation has but little effect.

Q. Solicitation without being backed up with an equivalent servi
to that of the competing line would not amount to much?

A. It has no material effect.

Q. I will ask you whether solicitation may or may not be define
as advertising, or bringing to the knowledge of the shipper th
service you are able to give him?

A. Yes; and the other things that a salesman usually passes out t
a customer.

Q. It is advertising your goods?

A. Yes, sir.

Q. Have you considered the effects or result of a separation of th
Central Pacific lines from the other lines operated by the Southe
Pacific Company?

A. In a general way; yes, sir.

Q. What would be the effect of that separation? By "separation"
I mean putting the ownership and management of the Centra
Pacific in separate and independent hands. What would be the effe
of that separation as to rates?

Mr. McCLENNEN. The petitioner objects to the question a
1959 incompetent, immaterial, and irrelevant, calling upon the wi
ness for an opinion which, by his previous answer, it does no
appear that he is qualified to express, and for an opinion based upo

facts not sufficiently certainly incorporated in the question, so that it may be known to the court upon what facts he bases the opinion.

(By request the reporter repeated the pending question, as above recorded.)

The WITNESS. It would have a tendency to increase the rates. It necessarily would increase some of the rates.

By Mr. HERRIN:

Q. Do you speak of local rates as contradistinguished from transcontinental rates?

A. Local rates; that is, the rates that now exist as between the Southern Pacific and the Central Pacific stations in California and other places.

Q. Or in the local territory?

A. Or in the local territory.

Q. Why would that separation have a tendency to increase rates?

A. It would make in many cases a two-line haul where a single-line haul now exists under the present system.

1960 Q. And does that, generally, a double service, justify a higher rate for the same distance than is justified by a single service?

A. That is the general rule.

Q. What effect would this separation have as to service to the public?

Mr. MCCLENNEN. The petitioner objects to the question as incompetent, immaterial, and irrelevant; calling upon the witness for an opinion which, by his previous answer, it does not appear that he is qualified to express, and for an opinion based upon facts not sufficiently certainly incorporated into the question so that it may be known to the court upon what facts he bases the opinion.

The WITNESS. It would impair both the freight and the passenger service, I would say.

By Mr. HERRIN:

Q. Will you explain more fully how it would impair that service?

A. It would require transfers where none now exist, and it would require the separate service of the Central Pacific and the Southern Pacific to perform a haul which the single line now performs; and it would disarrange the train service generally. I do not see

1961 how any other result could come, where the lines are separated, especially in the California territory.

Q. Is it possible or practicable to do away with these disadvantages you have mentioned by traffic arrangements between the two companies, operating on the one hand the Southern Pacific lines and on the other hand the Central Pacific lines?

A. You might do away with a few, but it is not practicable to away with all.

Q. What would be the result or necessity as to terminals, wh one company now owns the terminal and the other company has terminal at that point, and vice versa, or where lines are absolut disconnected by this separation of these properties? I refer to t branch lines owned by the Southern Pacific Railroad Compa which connect only with the lines of the Central Pacific, and not all with the other lines of the Southern Pacific Railroad Compa What must result from the separation of those lines with respect those terminals and those disconnected lines?

A. I would say, at the common points where the terminals owned by the one company, that it would either require a separ terminal constructed by the other company or the arrangeme
1962 for the joint use of the existing terminal. In either case would say it would mean an increase in the cost of doing t same business.

As to the short lines, in some cases they might, by joint operati connect up the rails of the Southern Pacific that were separate but I think in many of these cases it would require the building additional track to make the connection.

Q. If you have a terminal, say, at any connecting point, whi is entirely ample and sufficient to do the business when it is operat by one company, such as the Southern Pacific Company; now, i you separate these lines, would it not be necessary to incr se t terminal facilities for the operation of two companies at a poi like that, where the present terminal might be sufficient for sing operation?

Mr. McCLENNEN. I object to the question as leading, also as incom petent, immaterial, and irrelevant; calling upon the witness for a opinion which, by his previous answers, it does not appear that h is qualified to express; and for an opinion based upon facts not suf ciently certainly incorporated in the question so that it may be know to the court upon what facts he bases the opinion.

1963 The WITNESS. It might be necessary to increase the terminal At any rate, it would increase the expense of doing the busi ness, because a single company can operate the terminal, certainly at a less cost than that of the joint operation.

By Mr. HERRIN:

Q. And with less terminal facilities, really? If you have two com panies operating a terminal, do you not have to have a larger ter minal than where one company is doing the business?

A. That would be the tendency. I would not say as to the exte of the extension.

Q. You have considered mainly the effect of this separation upon the local traffic. Now, I will ask you what would be the result, what would be the effect, if any, on the interstate commerce served by those lines?

Mr. McCLENNEN. The petitioner objects to the question as leading, also as incompetent, immaterial, and irrelevant; calling upon the witness for an opinion which, by his previous answers, it does not appear that he is qualified to express; and for an opinion based upon facts not sufficiently certainly incorporated in the question so that it may be known to the court upon what facts he bases the opinion.

1964 By Mr. HERRIN:

Q. The first point I want to get at is—and I might as well ask it now—whether or not it would increase the competition as to interstate traffic or transcontinental traffic?

A. I do not think it would increase the competition to any great extent.

Q. Why do you say that?

A. Because the service really controls the securing of business, and it would be necessary to continue, really, the service that the lines are giving to-day in order to compete with the other lines in California. It might increase the solicitors somewhat, but it is a question whether it would be necessary to have any more solicitors in the field than there are now.

Q. You, of course, bear in mind that at the present time there is competition for this interstate traffic not only by the Ogden route, but the Sunset Route, the Atchison, the Salt Lake road, the Western Pacific and the Gould system, and the Panama Canal and other water carriers; that competition generally between those carriers now exists. Would or would not the entry of the Central

1965 Pacific lines into the field by a separate management change that situation to any appreciable extent?

A. I think it would not. The strongest competition that the Santa Fe have to-day in northern California is the route via Ogden. Next comes the route via El Paso, including the Sunset Route, and next comes the Western Pacific.

Q. Your first competitor is the Central Pacific line?

A. Taking the business as a whole.

Q. You find it a formidable competitor with the Santa Fe?

A. I certainly do.

Q. Do you think that it could be made any more formidable by putting it into the hands of somebody else than the Southern Pacific?

A. I think not. I do not see how it is possible.

Q. It is suggested in the petition—I will only attempt to give the substance of the allegation—that the Southern Pacific Company,

for the purpose of forcing traffic via the Sunset Route, via the S
set line, allows the service to deteriorate upon the Central Pacific
and refuses to make arrangements with the Union Pacific for
moving of the traffic by that line; that those things are done
favor traffic via the Sunset line—the Sunset-Gulf Route. T
1966 particular point I wish to call your attention to is the a
gation that they allow the service on the Central Pacific lin
deteriorate. Would the allowing of that deterioration, the allow
of that Central Pacific service to deteriorate, be to the interest of
Southern Pacific Company or against its interest?

Mr. McCLENNEN. The petitioner objects to the question as leadi

The WITNESS. It would not be to its interest.

By Mr. HERRIN:

Q. Would it be against its interest?

A. It certainly would be.

Q. Will you explain why that would be so?

A. The Santa Fe is the principal competitor of the Southern P
cific route to the Middle West territory, and for the business th
passes through the Chicago gateway to the points east of Chica
The Southern Pacific could not afford to let the Central Pacific ro
run down. They are necessarily bound to keep that service eq
to that of the Santa Fe, otherwise the Santa Fe would not only ha
the advantage in the business which is delivered directly to the poi
it reaches with its own rails, by Kansas City and Chicago, b
it would have the advantage in the business which goes to
1967 comes from the lines east of Chicago.

Q. Would any of this business get over to the Sunset Ro
in that way?

A. Yes.

Q. How?

A. It would. It always has done it.

Q. What I mean is: Would the impairment of the service on t
Central Pacific help to give business to the Sunset Route, or would
not merely help the Santa Fe and other competitors of the Centr
Pacific?

Mr. McCLENNEN. The petitioner objects to the question as leadi
and as leading away from the opinion just expressed by the witn

The WITNESS. The business is moved as a whole; and giving serv
to the Chicago business necessarily means giving service to the bu
ness also going east of Chicago; so that it all goes in together.

By Mr. HERRIN:

Q. Yes.

A. It could not separate the business going to the territory th
the Sunset Route serves, the seaboard territory, from the busi

1968 to the Middle West territory; so that on the whole it is absolutely necessary for the Central Pacific to keep the Southern Pacific in condition to perform just as good service as the Santa Fe. Otherwise they would lose business; they would lose business that goes to the western points as well as to the points east of Chicago.

Q. They would lose it to whom—to what company?

A. They would lose it to the Santa Fe, some of it, and the Western Pacific.

Q. I will get at that in another way: There is a large volume of business that moves eastbound and also westbound that goes to and comes from all of the territory that the Sunset is not a competitor of the Santa Fe for at all. The Southern Pacific is its only competitor, and the Western Pacific now. That business perhaps is greater, considerably, than the business in the Seaboard territory that the Sunset is a competitor for. Is not the volume of business that passes over the Central Pacific and connections many times larger than the business that may be competed for by the Sunset line with that line?

A. It is.

Mr. McCLENNEN. Petitioner objects to the question as leading and as calling for facts of which the witness, in the nature of things, can not have knowledge, and which would be better shown by witnesses who have knowledge of the facts and are in the employ of the defendant company.

1969

By Mr. HERRIN:

Q. I will ask you: Do you know whether or not the business which may be competed for by the Sunset line is at all equal to the other business that is noncompetitive which is served by the Southern Pacific line and connections?

Mr. McCLENNEN. Petitioner objects to the question as leading and as calling for facts of which the witness, in the nature of things, can not have knowledge, and which would be better shown by witnesses who have knowledge of the facts and are in the employ of the defendant company.

By Mr. HERRIN:

Q. I will ask you if you know.

A. I do; yes, sir.

Q. What do you say as to that?

A. I would say as to the noncompetitive business between the Central Pacific and the Southern Pacific and that between the Central Pacific and the Sunset Route the much greater volume is on the Central Pacific.

1970 Q. Then, to get the volume of noncompetitive busines
new business possible to be competed for by the Sunset,
Central Pacific line should be kept up to a high standard?

A. Yes; what I mean by "noncompetitive business" is bus
that originates on the Central Pacific line and terminates on
line; and then the business, such as perishable traffic that will
stand transfer en route and the bulk freight in both directions.

Q. And does that fact, of the volume of business, noncompeti
served by the Central Pacific line, being much larger than the
petitive traffic with the Sunset, make it to the interest of the Sout
Pacific Company to keep the Central Pacific line up to a high
of efficiency?

A. I would say that it does.

Mr. McCLENNEN. The petitioner objects to the question as lea

By Mr. HERRIN:

Q. In your evidence you have generally considered, as I u
stand it, freight business. Now, what observations have you to
as to passenger business, which is different from freight, and
competition? Is the Sunset Route a practicable compe
1971 with the Central Pacific route and connections as to passe
business?

A. The preferred route is the Central Pacific on the passe
business and has always been the Central Pacific and Union P
lines.

Q. Preferred by the company or by the public?

A. Preferred by the company and by the public.

Q. And by the public?

A. I would say so.

Q. The Sunset line is not a competitor to such an extent,
passenger business, as it is to freight, as I understand you?

A. No, sir.

Q. What are the advantages as to the Sunset line as to passe
business, if you could mention them, as compared with the Ce
Pacific line?

A. Compared with the territory you would go through if
would reach New York by New Orleans and the length of ti
will take you.

Q. The distance is much longer, is it not?

A. The distance is much longer.

Q. And how about the temperature in the summer season?

A. It is very hot, to say the least.

1972 Q. It is a little more comfortable on the Central line?

A. Much more.

Q. Are there any classes of shipments for which the Sunset-Gulf route could not compete and do not compete?

A. I think I mentioned before that the Sunset Route can not handle perishable traffic; that is, traffic that is shipped under ventilation or refrigeration, in either direction, and that it can not handle the bulk traffic, and that it can not handle traffic that there is any serious damage to by transfer, such as agricultural implements and vehicles and automobiles, and things of that character.

Q. As to perishable traffic or freight, you include within that what particular shipments?

A. I would include all of the fresh fruit out of California.

Q. Citrus fruit?

A. Citrus fruit; yes, sir; and all the vegetables. I would include anything that moves under refrigeration, like fish or meat.

Q. Oysters?

A. Oysters; and then the packing-house products and the dairy products.

1973 Q. The bulk traffic you refer to is coal and coke and grain?

A. Coal and coke and liquids.

Q. How about live stock?

A. Live stock is another class of traffic that the Sunset can not handle.

Q. That you can not handle on the Sunset-Gulf line?

A. Yes; that you can not handle.

Q. How about immigrants' movables?

A. That would be included in live stock, because they usually have some live stock with them.

Q. What would you say as to sash, doors, and blinds?

A. All of the forest products are excluded from the Sunset movement.

Q. How about locomotives?

A. They could not be handled by the Sunset Route.

Q. And passenger and freight cars?

A. Passenger and freight cars do not move by the Sunset Route.

Q. Do they carry high explosives?

A. They do not.

Q. Or silk or tea?

1974 A. Silk and tea, that movement usually makes passenger-train time.

Q. And for that reason it takes the central or northern route?

A. It takes the all-rail route.

Q. And furniture?

A. Furniture is also excluded from the Sunset line.

Q. I believe you mentioned automobiles and other vehicles?

A. Yes.

Mr. HERRIN. You may take the witness.

Cross-examination by Mr. McCLENNEN:

Q. When you first went to California the only railroads to Ca fornia north of Tehachapi Pass were the Central Pacific and t Southern Pacific?

A. Yes, sir.

Q. It has appeared in the record that the Santa Fe got into S Francisco May 10, 1899. Would that accord, about, with your sta ment of the date?

A. The lines were connected up July 1, 1899.

Q. July 1, 1899?

1975 A. Yes, sir. The San Francisco and San Joaquin route w connected by the general arrangement with the lines eas Mojave.

Q. There is some seventy miles through the Tehachapi that y run over the tracks of the Southern Pacific Company?

A. Yes, sir.

Q. And the thing which completed the Atchison service from t East to San Francisco was the making of the arrangement for the of those tracks to connect the Atchison with lines which you had quired north of that stretch?

Mr. BLAIR. You mean the service on its own rails?

Mr. McCLENNEN. Yes; I suppose that is better.

The WITNESS. Yes.

By Mr. McCLENNEN:

Q. Up to the completion of that arrangement the Atchison, for points north of Tehachapi, was dependent upon the forwarding b the Southern Pacific Company?

A. Yes; it was operated under a traffic contract with the South Pacific Company?

Q. Up to July 1, 1899, the Southern Pacific and the Central Pa cific, together, held an absolute monopoly of the California tra continental rails?

1976 A. North of Mojave.

Q. North of Mojave?

A. Practically so; yes, sir.

Q. What have you in mind when you use the term "practically"

A. The Santa Fe acquired the San Joaquin Valley road bef that time; probably had it about a year, and operated it as a lo They did not take any through business in there, because they h not any connection with it. That is, that applies as to the rail. T Santa Fe were in northern California to do business—to secure bu ness there and to deliver business there—under a contract wit

outhern Pacific Company which gave them certain rights on the outhern Pacific rails in northern California. They began in 1884 ith the joint traffic arrangement.

Q. Was that a contract for the use of the rails of the Southern acific, or the Central Pacific, or was it some contract with reference the divisions on business that was handled over the joint rails?

A. It carried the right to do business. It carried the right for the Santa Fe to operate with its own engines over the tracks, as I 977 understand it; or they could do their business through the Southern Pacific, by paying the Southern Pacific a certain roportion of the joint rate; and it gave the right to the Santa Fe carry a supply of its cars at different points in northern California, o that they would be convenient for distribution to any shippers hat might want them on the Southern Pacific tracks.

Q. Did the Atchison engines use to travel north of Bakersfield?

A. They did not. We never exercised the right to run our own rains. We did the business always through the Southern Pacific, nd allowed them the proportion of their joint rate for the haul to r from Mojave, as the case might be.

Q. Was the operation from 1884 to 1899 under a single contract, r was it changed in its terms from time to time?

A. Under a single contract.

Q. And did that fix the proportions of the joint rates from all outhern Pacific points to Atchison points in the East?

A. The proportion of the rate that the Southern Pacific was to eceive?

Q. Yes.

978 A. It did.

Q. That is, take it as——

A. As a fixed division of the joint rate for the Southern Pacific.

Q. To make it specific, was the arrangement such that the Atchison ould solicit and take and bill a shipment from Redding, California, ver the Atchison to Cincinnati, and have the proportion of the rate etermined by the contract between the two companies?

A. The proportion was fixed, I think, on Sacramento for the points orth of Sacramento. I think Sacramento was the point where we arried the supply of cars, and I think Sacramento was at that time, nd is yet, known as a terminal point, and I think the division of the ate was based on the haul from the terminal. I do not recollect all f the details.

Q. Did the Atchison under that arrangement use to issue through ills for eastbound freight from exclusive Central Pacific points in orthern California to competitive points in the East?

A. The Atchison issued its own bills of lading for the shipments ere routed by its line from points on the Central Pacific

1979 and the Southern Pacific which were included in the arra
ment. The way bill was made by the Central Pacific ag
and it was made through to the destination.

Q. Was it a Southern Pacific way bill or an Atchison way bill

A. It was a joint way bill. The routing east of the junction poi
that is, Mojave—with the Southern Pacific was directed by
Atchison Company.

Q. Do you mean joint in the sense that it called for a service o
two lines to reach destination? It was not issued as a joint obli
tion, was it, by the agent?

A. Yes; it was issued—the Central Pacific and the Santa Fe w
parties to the rate, to the rate as published. The Southern Pac
agent made the way bill, routing it Southern Pacific to Mojave
Santa Fe on from Mojave. That was a joint way bill, and it
made largely under the direction of the Santa Fe. Now, the So
ern Pacific, for performing the service at the station—that is, m
ing the way bill and doing the other things that are necessary in
ceiving the freight and billing that freight at Mojave—were allo
a certain proportion out of the joint through rate. That proport
was fixed in the contract.

Q. And the solicitors of the Atchison were at work
1980 northern California during the period from 1884 to 1899?

A. Yes, sir. We had an office in each of the larger cities
California, a separate office.

Q. What determined the question when a shipper at one of th
northern California places was going to send goods to Pittsbur
whether he should send it in part over the Atchison or not?

A. The shipper's directions determined. The directions that
shipper gave to the receiving agent of the Southern Pacific at t
terminal as to how the goods should move determined.

Q. And the effort of the solicitors among the shippers was to g
them to route via the Atchison?

A. The solicitors in California and whatever influence there w
in getting the consignee, the purchaser of the goods, to direct t
shipper how to route. It is my recollection, and in fact I know th
the business of the Santa Fe from points on the Southern Pac
rails was largely secured through the influence of the receiver; th
is, the consignee.

Q. That is, the receiver who was in——

A. In the East.

1981 Q. In Atchison territory, practically?

A. Whatever coöperation we could get from the line, pe
haps, that the consignee was located upon in the eastern territory.

Q. To what extent, from 1885 to 1899, did you carry over
Atchison freight which originated in Central Pacific or So

Pacific territory and was destined to eastern points that were not served peculiarly by the Santa Fe or its particular connections, like the Erie? I mean points where, so far as terminus was concerned, the field was equally open to the Southern and the Atchison.

A. On the eastbound traffic my recollection is that right from the beginning the California products largely divided on the basis of the population. That is, there was a time when seventy-five per cent or seventy per cent of the population was in the territory east of Chicago, and many times, in going over, our traffic moved out of California; to see just where it was going to it would always come close in its distribution to the distribution of the population. In other words, there would be seventy per cent of what we would haul, then, out of the Southern Pacific territory north of Tehachapi which
1982 would go to destinations east of Chicago or the Mississippi River and thirty per cent would remain in the western territory. We were stronger, of course, in the western territory than we were in the eastern territory.

Q. And you are using "western territory" to define Chicago and points west?

A. Yes; that is the way I speak of western and eastern territory.

Q. If I understand your answer, then, it is that of the freight you got which originated north of Tehachapi, about seventy-five per cent, was it, that you said?

A. Seventy to seventy-five per cent.

Q. Seventy to seventy-five per cent was destined to Chicago or points east?

A. Destined east of Chicago.

Q. Was destined east of Chicago?

A. Was destined east of Chicago.

Q. And from twenty-five to thirty per cent was destined to Chicago or west thereof?

A. Yes.

1983 Q. Do you know how the proportion of the total amount which you got north of Tehachapi compared with the total amount traveling from the territory north of Tehachapi?

A. No; I do not. We did not get any great bulk of it; I know that. There never was much.

Q. It was pretty small, was it not?

A. No; it was considerable. There was a large volume of it there. We had a large volume of business from points on the Southern Pacific rails.

Q. And what you did get was largely that which was influenced through the strength of your position in your own central western and eastern territory?

A. Our service and the help that we got from our connection which was not any small matter, and the solicitation of our men California. Of course, we got some business from the shippers California.

Q. But the chief effort, so far as eastbound business was concerned was through the consignees?

A. I think that is correct as to our traffic from points on t Southern Pacific rails.

(Whereupon a recess was taken until two o'clock p. m.)

1984 AFTER RECESS.

EDWARD CHAMBERS, the witness under examination at the taking recess, resumed the stand and testified further, as follows:

Cross-examination (continued) by Mr. MCCLENNEN:

Q. When was it, Mr. Chambers, that you made the arrangeme which provided for the through shipment of freight from New Yo to California? You referred to some arrangement with the Er Railroad, I think, before the recess.

A. It was after 1887; probably in 1888 or 1889, or somewhe along there.

Q. That was the first time that there had been, from the shipper standpoint, a through line from New York to California?

A. That was the first time there was any effective competition fro the Atlantic seaboard against the Sunset Route.

Q. And that was made by the fact that these lines, the Erie an the Atchison, had entered into this arrangement for through servic

A. Yes, sir. It took some years to work it up to a 1985 considerable volume of business. It was rather a slow proces because the Atchison line at that time was not in very goo physical condition, and as it improved the service improved and th volume of business increased.

Q. The great improvement in the Atchison came after the reor ganization, did it not?

A. After 1895.

Q. Prior to this through arrangement which you made with th Erie it had been customary to send carload lots through in the ori inal car, had it not?

A. Yes.

Q. This arrangement that you speak of provided for package car as well, did it not?

A. It did; yes; to a certain extent. Of course, all of the traffic di not move in through cars, but we had arrangements so that the Eri switched the car directly to the Santa Fe station at Chicago; that i

made a special effort to get it to the Santa Fe station and take the California freight and put it in with freight that had originated at Chicago and was being loaded out the same day.

Q. Did the Erie have any similar arrangement with any of the other roads reaching California?

1986 A. They did not at that time.

Q. What is the first time at which any similar through arrangement was made for any other rail lines from coast to coast?

A. At that time the Santa Fe was the only line into southern California outside of the Southern Pacific, and they were the only ones, really, that could compete with the Southern Pacific, and this competition with the Sunset Route in the beginning was just for the southern California business. We did not reach it to any extent in northern California.

Q. As you use the term "northern California" as distinguished from "southern California" you divide practically at the Tehachapi Range?

A. At the Tehachapi Range; yes, sir.

Q. What was the first of there being through billing arrangements from coast to coast through Ogden?

A. I could not say as to that, but it followed along after that time. The Santa Fe did not make very much of an effort to compete with the Sunset Route from New York on the northern California business until after it got its own rails into northern California; that is, after 1900, really.

1987 Q. It was not up to that time in a position to compete effectively, was it?

A. It was not on that class of traffic.

Q. In the nature of things the terminal lines, either initial or final, are in very much better position to compete than any intermediate carrier, are they not?

A. That is, they are in a better position to secure the routing of the traffic?

Q. Yes.

A. I would say they were; yes. The line upon which the industry is located usually has the preference, everything being equal. That is rather natural.

Q. Up to July 1, 1899, did any freight move in or out of California from or to east of the Missouri river except over the Central Pacific or over the Sunset line or by the Panama routes or around the Horn?

A. And via the Santa Fe from Mojave.

Q. And via the Santa Fe from Mojave. Those were the only routes?

A. Those were the routes; yes.

Q. Did the Canadian Pacific, the Great Northern, or the Northern Pacific have any effect on California?

1988 A. The Canadian Pacific did, to a certain extent, but they were not a serious competitor. They came in via Vancouver with the water service from Vancouver to San Francisco, and I think that perhaps the Great Northern, via Seattle, engaged in the California business—that is, the steamer line from Seattle down—but in the service the time was so much longer than the other routes that they were never very serious competitors.

Q. How about the route over the Union Pacific and the Oregon Short Line through Portland and down by boat to California?

A. That was not a serious competitor with the lines running directly to California.

Q. Do you know whether any freight moved that way?

A. I could not say. It is likely some freight did move that way but not any great volume of freight.

Q. Except for the gradual improvement in service over the Atchison, there was no change in the competitive condition, so far as California was concerned, between 1885 and the Atchison's getting into San Francisco in 1899, was there?

A. No; except in so far as the service by water was concerned.

1989 That always was a changeable quantity. Sometimes there would be a number of ships in the service, and then, again, there would only be a few.

Q. That is, via Panama or around the Horn?

A. Yes.

Q. The next change in the situation, after the Atchison's getting into San Francisco, was the opening of the San Pedro route, in 1901, connecting the Union Pacific with Los Angeles?

A. Yes, sir.

Q. And the next change was the opening of the Western Pacific from Salt Lake to San Francisco Bay in 1910?

A. Yes, sir.

Q. The Western Pacific has never become much of a factor in the competition, has it?

A. It has not. That is, it has not up to this time carried any large volume of tonnage.

Q. The influence of the San Pedro route on California is confined to the portion of California south of Bakersfield?

A. Yes, sir.

Q. Is any business done over that route and by water from San Pedro to San Francisco, in the carriage of transcontinental freight?

1990 A. No freight business.

Q. When you were at Pueblo, from 1879 to 1885, did you have more or less of a general knowledge of freight conditions in California, or was that beyond your range?

A. I had a general knowledge of the freight conditions in California, in so far as the traffic moved through Pueblo. I handled the waybills and revised the billing on California traffic that moved through Pueblo from along about 1883 until 1885.

Q. That was traffic which came over the Atchison from Deming?

A. It was the California traffic that moved via Deming; yes; and the Atchison into Colorado, and the westbound traffic that moved over the Atchison from Kansas City and was delivered to the Denver & Rio Grande at Pueblo and moved on through Ogden to a connection with the Central Pacific at Ogden and thence on to California.

Q. How far north, in your opinion, would it be reasonable to extend feeders in California for the Central Pacific Railroad north of its main line?

A. I would say up to the Siskiyou Mountains; up to the Oregon line.

1991 Q. That would be about the limit from which it could reasonably expect to draw?

A. I would think so.

Q. Now, in a southerly direction, how far?

A. For the Central Pacific?

Q. For the Central Pacific.

A. Under the present conditions, I would say the Tehachapi Mountains. Originally the Central Pacific drew a very considerable business in and out of southern California via Sacramento and Ogden in competition with the Santa Fe.

Q. How late did that competition keep up?

A. Well, it kept up in more or less degree until after the entrance of the San Pedro line into southern California, and after that time it was shut out entirely, or practically entirely.

Q. You mean because the San Pedro was in so much better position to handle that better?

A. To handle that traffic. But they handled the traffic that really, necessarily, had to move via the Ogden route. You see, there was considerable traffic in southern California, especially citrus fruits, that it was very desirable to put on the Union Pacific or Cen-

1992 tral Pacific-Union Pacific line to reach the market, say, at Omaha, and to the points north, where they could easily be diverted. That business moved, before the entrance of the San Pedro line into southern California, north over the Southern Pacific via Sacramento, Central Pacific and Union Pacific; and with that traffic they carried some traffic—a very considerable amount of [illegible]—going to Chicago and points east of Chicago.

Q. You have spoken of it being the natural businesslike thing t the Southern Pacific to extend its line through Arizona, New Mexi and Texas to New Orleans. I take it that you meant that was t natural businesslike thing to do for the creation of a transcontinent line across that part of the country?

A. Yes; and to secure the traffic that was moving between t seaboard territory and California at that time.

Q. That is, the Atlantic seaboard territory?

A. Yes.

Q. That was a development which would bear no relation to t line between San Francisco and Ogden? By that I mean a railro having a line down in southern California would just as natural seek to extend it to New Orleans and connect for the Atlan

1993 coast, whether it did or did not own another line runni from San Francisco to Ogden?

A. I would not say that at that time it would be a very attracti thing for a line that just served southern California to extend i line over into Arizona. I would not say that, because the gre volume of business in California, when those lines were first bui was in northern California. The California products, the popul tion, the business of California, was really, in 1883, I think, ve largely north of the Tehachapi. The citrus business was very lig at that time; just starting in.

Q. That southern development was for through business, and n as a feeder to the Central Pacific throughout?

A. Well, of course, as a local line—as a local business to be s cured—perhaps that was the most desirable line to build throug Arizona. I think if I was going to build a line through Arizo from southern California I would have taken about the same cour that the Southern Pacific did. That is through the most productiv part of Arizona, the most profitable part of Arizona, at that time.

Q. Any extension of that line would not be undertaken as th extension of a feeder to the Central Pacific line in any sens would it?

1994 A. No; it would not.

Q. You think there was a time when the Sunset line wa carrying from eighty to ninety per cent of the total California trans continental business?

A. Yes. That is, not of the total; I did not say the total Califor nia transcontinental business in both directions. I say they wer carrying that proportion of the business to the Atlantic seaboard territory.

Q. I see.

A. Of the business that could be moved via the Sunset Route, tha it was possible to move that way.

Q. That is, you mean eighty to ninety per cent of the competitive business; not eighty to ninety per cent of the total business?

A. I mean eighty to ninety per cent of the California Atlantic seaboard traffic; that is, traffic that was right on the Atlantic seaboard, or close to the Atlantic seaboard; in what is known as Atlantic seaboard territory; that could be moved conveniently via the Sunset Route; in other words, freight that would stand transfer, package freight and dried fruits and canned goods; and the wines—
the principal commodities eastbound, and miscellaneous articles
1995 which were at that time almost exclusively manufactured in the Atlantic seaboard territory.

Q. And that has reference to all parts of California?

A. Yes.

Q. How long did the large proportion that you have mentioned, the large percentage that you have mentioned, continue?

A. It began to diminish as the Santa Fe built up its trade; after 1888 I should say. The Santa Fe reached Chicago in 1888, and then it began to actively solicit and go after the California seaboard business, and as the service improved, as we got into the business, the Sunset's proportion decreased. Of course the other lines through the Omaha gateway went after the business in the same way, but they could not, in the beginning—their competition was not as effective as ours because we had only the one transfer, if a transfer had to be made, and that was at Chicago, while via the Omaha gateway there was one at Chicago and another one at Omaha.

Q. Since you have blazed the way with the Atchison, the other lines have found it possible to do somewhat the same thing through Ogden, have they not?

1996 A. They have; but I think that to-day the Atchison is the principal competitor of the Sunset Route, especially for the westbound business from the Atlantic seaboard territory to California. Next to that, I guess, their's is the largest volume.

Q. You have found it possible, as a practical matter in railroading, to overcome virtually all difficulty incident to the use of a connection to make your through line to the Atlantic?

A. Yes. That is nearly correct, I will say that, for almost all of the traffic to California at the present time. That is one of the great obstacles in competing against the Sunset Route, whether under a single management or if these interchanges are necessary between the different parts of the through route, between California and New York.

Q. Up to the time that the competition of the Atchison made it necessary, do you know what, if any, efforts the Southern Pacific made to make its service through Ogden equal to or preferable to that [illegible] Sunset Line?

A. I do not.

Q. Did you ever hear of their making any?

A. I do not know that I did. I do not recollect.

1997 Q. Do you know whether one of the things which led to the large proportion going over the Sunset Route was that if any of the agents on that line chanced to misread the tariffs he did not have to explain his error to any connecting road?

A. No; I did not know of anything of that kind. We always tried to keep the rates via the Santa Fe route the same as via the Sunset Route.

Q. Has the Interstate Commerce Commission, as far as you know, ever taken any part in the reduction or fixing of the transcontinental rates, ordinarily, of the railroads, excepting, of course, this pending matter of permission to make a lower rate for the long haul and for some of the shorter hauls in order to meet the water competition?

A. They have fixed the rates on various commodities. They fixed the class rates practically. Of course, the rates to the terminal points that were compelled, by the water competition, to be recognized as being below reasonable rates, they never dealt with at all, excepting so far as to prescribe under the fourth section of the act the long and short haul clause.

Q. With the exception you have just mentioned, the railroads themselves, and the competitive influences, have deter-

1998 mined the rates, rather than any Government authority?

A. Westbound rates to the terminal points.

Q. That is true?

A. Yes; but then there is a large volume of traffic that moves under rates that are reasonable rates in and of themselves, where the traffic is really not subject to competition of the water carriers, and as to a lot of that the commission did fix the rates.

Q. What influence did the Southern Pacific Company have on the California rate situation up to the time that the Atchison got into San Francisco? Did it have practical control of that?

A. In northern California the Southern Pacific, being either the delivering line or the originating line, no rates could be made without their concurrence—no through rates, joint rates.

Q. They were practically masters of the situation as to freight rates?

A. On all the rates which were known as joint rates, less than the combination of the local rates.

Q. In the development of years it has been the effort of the

1999 railroad men to keep the rates uniform over the different roads for the same service, has it not?

A. Yes.

Q. And, barring particular occasions, they do not in that sense compete as to rates?

A. That is true.

Q. The presence of one or more railroads, or of more than one railroad, capable of performing a given service, does have the effect of lowering the rates over a long period of time, does it not?

A. Yes; it may have that effect to a considerable extent, I would say. Generally they aid to keep the rates uniform, and the conditions as to the necessity for the rates are usually pretty well known to all of the carriers that are competing for the traffic.

Q. Service is very much influenced by competition, is it not?

A. It is.

Q. If you have four railroads in position to do the same business, the chances are that you will get better service over them than if you have two?

A. That is all there is in competition to-day, under the conditions to-day—competition in service.

2000 Q. You have spoken of certain kinds of business that would not move over the Sunset Route, but which would move over the Atchison or would move through Ogden. Is there any converse to that? Is there anything moving between California and points east of the Missouri River and, say, north of St. Louis and including St. Louis, which does move over the Sunset Route, which could not move as readily or more readily through Ogden or over the Atchison?

A. Just name that territory again, will you?

(The question was repeated by the reporter as above recorded.)

The WITNESS. I do not know of any volume of traffic, or, in fact, of any traffic that moves via the Sunset Route into the territory you have mentioned; that is, moving via the Southern Pacific lines through Texas, up to St. Louis. There may be some business moving back there.

By Mr. MCCLENNEN:

Q. That is as to all the traffic between the territories which I mentioned, all that the Sunset Route carries can be carried equally well by the Atchison through Ogden?

A. Into that territory?

Q. Yes.

2001 A. Yes; I should say it could, except from southern California up there. Of course the Ogden route, the Central Pacific route, is practically out of the traffic now going up from southern California into that territory. Under the Southern Pacific tariff they move eastbound via El Paso or their connection with the Rock

Island, or with their other connections; say, from northern Califor-
nia my answer would go.

Q. Would this be correct, then: That all the freight between south-
western Oregon and California north of Bakersfield on the one hand
and north of St. Louis and including St. Louis and east of the Mis-
souri on the other hand, is naturally competitive as between the
Ogden route and the Sunset Route, except those particular kinds of
freight which you have mentioned, which, from their nature, can not
be moved by a split rail and water movement?

A. What you intend to cover is what is known as the Middle West
territory—the territory practically west of Chicago and east of the
Rocky Mountains, except the southern territory?

Q. No; I mean east of the Missouri River.

A. Or east of the Missouri River.

Q. East of the Missouri River to the Atlantic Ocean?

2002 A. The Sunset Route is not a desirable route for that traffic
from northern California. The competition for that traffic
out of northern California is between the Atchison, the Western
Pacific, and the Central Pacific. I have never heard of any consid-
erable volume of business moving out of northern California down
through Los Angeles and via El Paso to that territory or through
the Texas points.

Q. By "that territory" you mean what you call the Middle West
territory?

A. What you described—north of St. Louis and east of the Mis-
souri River, which would take in, as I understand it, Chicago, Wis-
consin, and so on.

Q. I think I perhaps did not make myself fully clear. When I
said "east of the Missouri River" I meant east all the way to the
Atlantic Ocean.

A. Oh!

Q. That would change your answer, would it?

A. Yes; that would change it. It would change it in so far as the
seaboard territory is concerned.

Q. To see that I clearly understand you, let me put it in this way:
Take the territory which you have last defined, the so-called
2003 Atlantic seaboard territory as the eastern territory, and take
California north of the Tehachapi Mountains and southwest-
ern Oregon; are the route through Ogden and the Sunset Route, so
called, naturally competitive as to all commodities except those which
you have mentioned which can not take a split rail and water haul?

A. I would say for that traffic, from northern California through
to the Atlantic seaboard, the competition is between the Sunset Route
and the Central Pacific and its connections and the Atchison and the
Western Pacific, and the service is practically on a parity to-day

at is, perhaps the Western Pacific service is not so good as the hers, but the Atchison and the Central and Union Pacific, the orth Western and its connections beyond Chicago, are equal to the nset Route.

Q. Between those territories and in those classes of freight you are ware of the fact that the effort of the Southern Pacific Company to get freight as far as possible via the Sunset Route, are you not?

A. That has always been its position, as I understand it, where they uld handle the business through the Sunset.

Q. And its chief competitor in that effort to-day is the Atchison?

004 A. The Atchison and the Central and Union Pacific routes.

Q. The Central——

A. Let me explain that to you. The Central Pacific line via gden has always been a competitor with the Sunset Route for the aboard business.

The Union Pacific have their solicitors in the field working the siness for that route and always have had. So has every con- ection of the Southern Pacific, in turn, east from Ogden, until you t clear through to the Atlantic seaboard.

Take, for example, the New York Central or the Pennsylvania; the longer haul is via the Chicago gateway and the industry, the ceiver of the freight, is located on their rails in the interior, along eir rails somewhere, say, removed from the Atlantic seaboard, all e influence they have will be to work that business through the hicago gateway. They would either work it over the Central acific-Union Pacific route or over the Atchison. That extends ear along through. The closer you get to the Atlantic seaboard, e more active the eastern lines which are after the business via the Chicago gateway, because the longer their haul. The main

005 support the Atchison gets in that territory is from the delivering lines in that territory, on the eastbound business.

Q. That is to say, is it not, that between these territories, the outhern Pacific tries to get the freight to go by the Sunset line; e Atchison tries to get it to go by its line; the Western Pacific and s Gould line connections, so called, try to get it by their lines; the ailroads such as the New York Central and the Pennsylvania try get it to go either by the Atchison or by the Ogden line; the Iowa nes, such as the Chicago & North Western, try to get it to go via the gden line; the Union Pacific tries to get it to go via the Ogden line. s that correct?

A. Yes, sir.

Q. And that is practically, in the rough, a complete statement of hat the competitive efforts are, is it not?

A. Yes. The Sunset works the seaboard business alone. They have no supporters at all; they are alone; they are against all the others in working that business. Against them are the Atchison with its solicitors out there in the field, and all the influence that the Atchison can get from its connections beyond Chicago; the

2006 same way with the route via Ogden, the Central Pacific Union Pacific route; the Union Pacific are after that business and they, of course, bring to bear all the influence they can get from their connections.

So, for the seaboard business out of California—and that is true as to the Western Pacific, what I say about the Central Pacific-Union Pacific—but for the seaboard business out of California the three routes—the Atchison, the Central Pacific-Union Pacific route, and the Western Pacific route and its connections—are against, or opposed to, or in competition with, the Sunset Route.

Q. The situation during the period of the Union Pacific merger, so called, was the same, was it not?

A. Practically the same.

Q. During that period the Southern Pacific, even when the Union Pacific controlled it, tried to get the seaboard business via the Sunset line?

A. They did.

Q. The Union Pacific during that period tried to get all that it could over the Union Pacific?

A. Yes, sir.

Q. The Central Pacific would be in a much more powerful

2007 position to affect the routing of freight between California and the Atlantic seaboard than the Union Pacific or the Chicago & North Western are, would it not?

A. It would, so far as the traffic originated or had destination on its lines—whatever influence goes with serving the shipper at the point of origin or at the point of destination.

Q. If it were not controlled by the same interest that the Sunset line is controlled by, it would undoubtedly put forth that effort to get as much to go as possible via the all-rail line through Ogden, would it not?

A. It likely would; but I do not think the Central Pacific by itself with just its present rails, would hardly get as much traffic, if it were separated by itself, as it could in with the Southern Pacific as one line.

Q. Where do you think the traffic originating on the Southern Pacific rails which now moves through Ogden would go, in case of the separation?

A. I would say this for that traffic, so far as going over the Central Pacific to the territory Chicago and west is concerned: That

outhern Pacific work that business now all over the Central Pacific from northern California. They are compelled to do that,
008 really, for no other purpose than to meet the competition of the Atchison out in northern California.

Q. Do you know what the explanation is of the amount of tonnage hich does, in fact, according to their figures, travel from northern alifornia through El Paso on its way to Atlantic seaboard ter-itory?

A. The volume?

Q. Yes.

A. I do not know, except in a general way.

Q. You know that it is a very substantial volume?

A. It always has been; yes, sir.

Q. That volume would be rather apt to go through Ogden, would t not, if the Central Pacific was seeking it?

A. I would not say so. I do not know that there would be any aterial change in that. As I say, the service, of course, is the ain factor, and so long as your service is equal the business would ivide up, likely. Of course it might be that the Central Pacific ould have a little more influence in securing the routing with usiness that originated on the Central Pacific rails and was going into that territory.

009 Q. At the present time your railroad has in California one life-size competitor, has it not, and that is about all?

A. The Southern Pacific?

Q. The Southern Pacific.

A. We have the two routes—the Ogden route and the Sunset oute—and the San Pedro line.

Q. That is, the San Pedro line you have in southern California?

A. Yes.

Q. Only?

A. That is all.

Q. North of the Tehachapi you have the Southern Pacific only?

A. Yes, sir; and the Western Pacific, of course, is a competitor or the western business with us, and does a considerable business rom San Francisco and Stockton; those two points are where they ompete with us.

Q. It is pretty small, as compared with——

A. It is not a very large volume; as compared with the business f the Atchison and the Southern Pacific it is small. Still they are fter the business all the time. They can not handle very much; their plant is not in shape to handle any very large amount of it.

010 Q. Disregarding the Western Pacific, but, of course, keeping in mind the amount that you attribute to it; if the Southern

Pacific and the Central Pacific were divided, your road would have two vigorous competitors in the territory north of the Tehachapi Mountains?

A. I think we have two now. I do not see how there could be any more competition than what there is right to-day. We are in the same position——

Q. You are admitting that you would have two, then?

A. We are in the same position with respect to the business at Chicago. For example, that the Sunset Route is on business to the Atlantic seaboard. The field is against us on the Chicago business. We have not any support. We have no support from the lines running west of Chicago on the California traffic; none whatever. We go it alone on that.

Q. Again disregarding, for the moment, the Western Pacific, the "field" as you term it, north of the Tehachapi Mountains, is the Southern Pacific Company—one company—is it not?

A. They are the company that has the rails in that territory.

2011 Q. If the two roads were divided, there would be two companies in that field competing with you, would there not?

A. There would be, yes.

Q. There is now one general traffic manager in that territory competing with your general traffic manager, is there not?

A. It is not the one traffic manager that makes the trouble in competition, whatever trouble the shipper makes; it is the fellow who solicits from the man that is right at his station; and those station agents would be just the same; there would be no change in them. The influence on the shipper would be just the same, just as much as under the one as under the two. You could not change that.

Q. That is, you mean, in the natural course of things, some arrangement would be made by which those terminals would be jointly operated?

A. No; I mean if you should separate the Central and the Southern Pacific, the agent would remain at the station just the same, whether it was called the Southern Pacific or the Central Pacific. He would be there; the solicitor would be there, and the industry would be located on the same tracks, and whatever influence you could bring to bear on the shipper, what naturally goes where

2012 the shipper is located on your rails, would be still there against the Atchison, and would not be worked any harder, I believe, than it is to-day.

Q. I am a little afraid I have got unhitched from my moorings. Let us take one place—Sacramento: If these two roads were divided, there would be an agent there, would there not?

A. There would be separate agents.

Q. Would there be two agents there?

A. It would depend altogether on how they arranged that matter when they separated. There would be two soliciting agents, undoubtedly, there, if the lines were operated separately.

Q. And they would be competing with each other, naturally, would they not?

A. Yes.

Q. And the Atchison would have a soliciting agent in Sacramento, would it not?

A. Yes.

Q. And that man would be kept busy trying to counteract the work of two men, where now he is trying to counteract the work of one man, would he not?

2013 A. It would altogether depend upon the force. Naturally, if the business were divided—that is, if the lines were separated—the Southern Pacific would not need as large a force of solicitors as they have to-day. They probably would reduce the number; their business would not be so large; it would be just a question of whether you would have more soliciting against us under the single ownership than there would be under the joint ownership. There might be some more; I naturally would expect there would be some more, but not anything to make any more competition for us in a serious way than what we have now.

Q. You would rather expect that there would be some more at all those points where both rails reach, would you not—both the Southern and the Central rails?

A. Well, taking the larger points, I think I would prefer to have the Atchison compete against two—divide the thing up and divide the facilities up—than against the one, because the influence then would be more nearly equalized.

Q. That is, if you consulted your own wishes, you would have the Central and the Southern divided into two railroads, would you?

A. From the Atchison standpoint I think that it would be better for the Atchison to have them divided.

2014 Q. To have them divided?

A. I think that we would have a better chance to compete with the two than we would with the one; that is, our influence would be nearer equal to theirs.

Q. You mean, taking it, for instance, in San Francisco, that you think the Atchison would get more business out of San Francisco if the Central independently was trying to get it, and the Southern independently was trying to get it, than it gets now when the Southern alone is trying to get it, do you?

A. Here is what I have in mind—it is not the man who goes and solicits the freight; that is not the way the bulk of the freight is

secured. Of course you have got to have the solicitor, and he h
to go around and see your patrons, and has to find out all t
troubles; but there is something else: If an industry is located
your rails, and you are serving all of California with your trac
that industry can ship anywhere in California over your rails;
does not have to switch the car to some other line, and you hav
very considerable influence on that industry. If there are any n
industries to be located, they are likely to choose the line w
2015 the greatest mileage. It is better for them to be located
the line that has the greatest mileage, that serves the m
points. That is what we ran up against in California, and it w
a very difficult thing for us to overcome, especially in the San J
quin Valley, in trying to get industries located upon our tra
there, because the Southern Pacific Company serves all of Califor
while we only serve part of it.

Q. Would you generalize to the point of saying that gener
you would prefer to have two solicitors competing against your
for the business, rather than having one competing against your o

A. I would not say that generally. It depends altogether on j
the traffic involved, and just the influence of the man. If the tra
was free, where it could go to one just as conveniently and jus
cheaply to the other, the solicitor would probably have some in
ence in securing the routing; and maybe if you had two, getti
around more frequently than one could, it might secure additio
business in that way; but the great big, large business of the car
is from the manufacturing institutions that are located on th
rails.

2016 Q. If the Central Pacific were separate from the South
it would greatly increase its disposition to throw out
rails to reach new business, would it not?

A. It might; yes.

Q. You would expect that it would, would you not?

A. I should think so; yes.

Q. That would tend to increase competition by that much?

A. Well, it might.

Q. Don't you think it would?

A. It perhaps would, to a certain extent; but not in any seri
way, so long as the lines that are there to-day are actively compet
and have a capacity to carry all the business and carry it satisfa
torily; then, I do not think the building of any additional lin
going to increase competition to any extent, where the shipper
going to be benefited or where the public is going to be benefited.
do not see how anything would come out of that.

Q. The presence of the Atchison in San Francisco has not only in what it has given itself but in the effect upon competition tremendously increased the service to the public of the railroads in California, has it not?

A. It has helped.

2017 Q. In all probability it not only has given the better service that it has given itself, but also has been influential in causing the Southern Pacific to give equally better service?

A. Well, that may be. The Southern Pacific always gave very good service over their Central Pacific line. Their passenger service I judge them by more than anything else. That is my recollection.

Here is what I have in my mind, however, about the competition: That the Atchison can furnish good service, and has furnished first-class service, and the Southern Pacific have got to furnish equally as good service to compete successfully against them.

Now, both of them together have not got, neither one of them has got, all the business they can handle. They could handle considerably more and give just as good service on it. I say putting another line in, or adding new feeders, new rails to reach these same points, where the volume of business from those points is not sufficient to supply up to a reasonable capacity, the rails that are already there, would not get any new industries. The industries are pretty well developed in there, until the State grows a little more in production.

2018 Q. The Atchison has practically no feeders or branches north of Bakersfield, has it?

A. Yes; it has a line from Crocker around through Tulare and Visalia.

Q. Has it any other?

A. Its rails reach the very best part of the San Joaquin Valley. I do not know of anywhere else in the valley that I would recommend the Atchison to go to-day with its rails.

Q. Don't you see you have not quite answered my question, Mr. Chambers? I simply asked—not whether it was wise for it to have any new feeders, or many of the other questions that might arise, but the simple question whether, with that one exception, it has any branches.

A. Yes; it has one out from Reedley, which leads up to Piedra. It has a branch line from Cutler down through Exeter, and is building from Exeter to Lindsay now.

Q. Has it any others?

A. That is all; except its joint ownership of the Sunset Route running from Bakersfield west.

Q. You do not mean "joint ownership", do you? You mean joint operating arrangement, do you not?

2019 A. No; joint ownership of the Sunset Route—joint own
ship with the Southern Pacific of the line that runs out i
the oil fields from Bakersfield.

Q. Oh, I beg your pardon.

A. There is another one leading out from Laton to Lanare. It
only a short line.

Q. With the exception of the branch lines that you have m
tioned, and those points which are reached by the Atchison's o
rails, the Atchison does not get much transcontinental freight
cept that which it can influence from the east through the consign
there, does it?

A. You mean off the Southern Pacific rails?

Q. Yes.

A. Well, we get a considerable amount of business from poi
exclusively on the Southern Pacific line right along, to various de
nations; some to western points, some to the eastern points.

As I said before, that business we get principally through
consignees. We get some through the consignors, but the princi
part of it, the majority of that business, we work through the c
signees and through our connections.

Q. With the exception of those places in Califor
2020 which you touch, and what you can influence through the e
ern consignees, everything north of the Tehachapi which
going to the eastern part of the country is going to go over eit
the Sunset Route or over the Ogden route, is it not?

A. Yes. We have connections independent of the Southern Pac
in northern California. We have the Central California Tracti
Company, running from Stockton to Sacramento; we have the O
land & Antioch Electric line, running from Oakland to Sacrame
crossing the river near Bay Point; we have the Northern Elect
Railroad, running north from Sacramento, that connects with
Central California Traction Company at Sacramento.

Q. How far up does that go?

A. It runs up to Chico, the Marysville territory, and runs over
Hamilton. Of course we have the half ownership in the Northwe
ern Pacific, which runs from San Francisco up to Eureka.

Q. This competition of the Atchison has been present since Ju
1899?

A. Yes, sir.

Q. When the Union Pacific acquired control of the South
2021 Pacific, the presence of the Atchison competition just as m
necessitated the keeping up of good service over the Cent
and Union Pacific as it does now?

A. It did; yes.

Q. So that all you have said about the effect of the Southern controlling the Central, or of a division between them, was equally applicable to the so-called merger between the Union and the Southern?

A. In so far as keeping up the service to compete with the Atchison was concerned; yes, that is true. In fact, it is necessary for the line clear through from California to Chicago. The different lines that form the through route all keep their service up to the standard so as to make as good time as the Atchison does.

Q. That is, so far as the effect upon the benefits to the community, so far as the effect upon the competition is concerned, you would make no distinction between the joint control of the Union and the Sunset and the joint control of the Central and the Sunset?

A. No; I would make no distinction.

Q. Except that, of course, the Central is in a more powerful position than the Union to influence California business?

2022 A. Yes, sir; it is.

Q. Going back to the ancient contract that the Atchison had with the Southern for division of rates north of Mojave before 1899, just what did you mean by the expression that you thought Sacramento was the terminal or was a terminal under that arrangement?

A. Well, originally the joint rates applied from certain specified points in California. They were known as terminals. As to the business that originated beyond the terminal the rate was made by adding the local rate, say to the terminal point, and then the joint rate from the terminal point on. I think that is what is referred to in the contract as the rate from the terminal point.

Q. That is what you had reference to?

A. Yes.

Q. You spoke of sending your cars up as far Sacramento. Did you mean that that was a distributing center for the cars that were going to be filled on the Southern Pacific lines and delivered to you?

A. The contract provided that the Southern Pacific should keep a supply of Atchison cars at Sacramento, San Jose, Fresno, and
2023 several other important loading points, San Francisco, so they might be furnished to shippers desiring to use the Atchison route conveniently and within a short time.

Q. The haulage was all done above Mojave by the Southern Pacific?

A. By the Southern Pacific. They either made up that supply of cars from what Atchison cars were on their own tracks or the Atchison delivered the empty cars to the Southern Pacific at Mojave and they moved them up north; sent them to these different stations.

Q. What was the name of the line north of Bakersfield which the Atchison obtained in 1898?

A. The San Francisco & San Joaquin Valley Railway.

Q. On obtaining that line the Atchison undertook at once a
sideration of building a line to connect its own line at Mojave
that line?

A. It did.

Q. And it was the fact that it was going to put through a li
its own which led to the making of the arrangement with the S
ern Pacific for the joint use of tracks instead?

A. I think, as well as I can recollect, that arrangement
2024 out of a suggestion of Mr. Ripley, president of the Sant
road, to Mr. H. E. Huntington, I think. We had survey
line over the mountain from Mojave, via what is known as the T
Pass, and the estimated cost was something like five million do
There was no traffic on it whatever, and none to be secured. It
right through the rocks, the mountains, and there was very
traffic on the Southern Pacific line between Mojave and Bakers

Mr. Ripley made the suggestion that that line could serve us
that it was practically a bridge, anyhow, and that by strengthe
it, and by building some more side tracks, it could be put in sha
handle the business satisfactorily of both companies, and we w
save the investment, or more than half of the investment, at
that would be necessary to build our own line through there.

Q. And Mr. Ripley called that contemplated surveyed line to
attention of the Southern Pacific?

A. I think they knew about it; yes. The surveyors were in
field there for quite a long time, so they knew it. That is my r
lection of how it came about.

Q. The company was incorporated for the construction of that

A. It was; yes.

2025 Q. If the Central Pacific and the Southern Pacific were o
ated separately, the natural, business-like thing to do woul
for them to arrange for some joint use of the terminals at com
points and for the use of those pieces of track essential to t
through routings, would it not?

A. It would; yes.

Q. It is the kind of thing that is done more or less by railroads
arately owned, is it not?

A. That would be a little bit different, perhaps, from any of
arrangements with which I am familiar. It is usual for qui
length, where joint operations are put into effect.

Q. You mean for quite a length of track?

A. Yes. Of course, in the terminals it is frequently done; that
terminals are operated by two companies, or more, that are o
peting under a joint management.

Q. If these present terminals were jointly operated, would they be adequate for the business to be expected over the two roads as they now are?

A. I think practically they would be. There perhaps would be some additional cost to provide things that might be necessary
2026 where two competing lines are together in a terminal.

Q. The difficulty, so far as intrastate business is concerned, of a split haul, would be the same difficulty that is experienced to-day when a shipper is shipping from a point on the Central Pacific in California to a point on the Atchison in California, or vice versa?

A. That is correct.

Q. In those places that the Atchison touches it is not possible that a division between the Central and the Southern Pacific would have the effect of increasing the rate at present prevailing, is it?

A. That might be perhaps true as to traffic that the Atchison would serve both the point of origin and the point of destination; in other words, have the through rate published.

Q. And the same would be true of those points where the Western Pacific serves both?

A. Yes.

Q. Or where the Atchison and the Western Pacific together serve both?

A. That is true. There is no general system of joint rates
2027 between the Atchison and the Southern Pacific in California. There is to some points where there is a long haul for one or the other; but you take the general local business and it is largely governed by the combinations—that is, the rate of each carrier.

Q. You mean a combination of the locals?

A. A combination of the local rates. I can not see how a different rule could be applied to the Central and Southern Pacific than is applied now to the Atchison and Southern Pacific on similar business; where we haul a short distance the rate per ton per mile is very much greater than it is for the longer distance. You add two short hauls together, of two separate carriers, and the total rate is very much greater than the same mileage on a single line.

Q. If the Atchison and the Southern Pacific should enter into joint operation, it would have the effect, I take it, then, to materially reduce the local rates in California, would it not, between points at least that require the two services?

A. No; the rates in California, in northern California especially, particularly in the San Joaquin Valley, have all been fixed by the California State commission, and they fix a basis for a two-
2028 line haul and for a single-line haul. We are entitled to receive those rates, whether the publication is a joint rate or whether

it is just on the combination of the local rates over the junc point.

Q. Perhaps I did not make quite clear what I had in mind. I supposing that the Atchison and the Southern Pacific should am gamate, so that all the Atchison and Southern Pacific lines were erated by one company; then, according to the system which suggest, the California commission would fix the rate in accorda with the single-line haul scheme, and that, if your theory was ried out, would greatly reduce the local rates in California betw points on the Atchison and points on the Southern Pacific?

A. It would reduce the rate wherever that consolidation mad continuous haul over the single line, where to-day it is a combinati over the junction point of the two lines.

Q. And that same principle applied to transcontinental ra would result that if all railroads in the country were operated one concern it would correspondingly reduce the rates?

A. No. The long-haul rates are all made on a different ba They are much lower than the combination of the local ra
2029 or the combination of the rates of any single carrier in t through line.

Q. You do not think it would make to such economy of operati as to lead to the reduction of rates if all railroads were one?

A. I think perhaps consolidation to a certain extent would redu the cost. The question is how far you should go for efficiency.

Q. That is, there comes a point in the making or permitting combinations where there are some other elements that come into t equation that counteract the economies in rates and expenses of th combination?

A. I think so.

Q. Were you familiar with the condition of the Central Paci Railroad prior to the merger with the Union Pacific in 1901?

A. I was in a general way.

Q. After that merger the condition of the Central Pacific was ve much improved, was it not?

A. The physical condition of the Central Pacific has been improv ing right along for years. I do not know whether it was more or le after that time.

Q. Do you remember any marked improvement betwe
2030 1890 and 1901 in the physical condition of the Central Paci Railroad?

A. I know it was improved considerably, but I could not say just t what extent.

Q. What do you recall by way of improvement during that period

A. I would say the condition of the track. That is what we judg it by—the condition of the roadbed and the rails.

Q. How about the equipment during that period?

A. I do not know as I could say as to that. They have been getting new equipment right along. I know the Central Pacific-Union Pacific route has been improving right along up to to-day.

Q. Was not your attention drawn to some rather marked improvements that were made after 1901?

A. Well, perhaps the work on the line was more extensive than it had been before. I think that is correct.

Q. Prior to 1901, or prior to 1899 anyway, the great energies of the Southern Pacific Company had been directed towards the development of the Sunset line, had they not?

031 A. I would not say that their roadbed east of Los Angeles via El Paso was ever in better condition than around by Ogden and Sacramento. My observation and recollection is that it was just about the same. If anything, I should say the Central Pacific was a little better. It had, perhaps, more need of a better roadbed than any other line, on account of the large passenger business it did.

Q. Did you know of the special equipment which was furnished for use over the Sunset line exclusively in the matter of rolling stock?

A. No.

Q. You never had that called to your attention?

A. No.

Q. You did know that the freight service over that line was very much better than over any other?

A. The freight service over which line?

Q. The Sunset line.

A. To New York it was better than any other.

Q. And that continued up to a period after 1901?

A. Yes. It continued until the all-rail lines had arranged their service so as to make it equal with the Sunset Route service.

032 Q. Do you know which of the all-rail lines initiated the effort to bring the Ogden route up to the level of the Sunset route in service?

A. Well, I think all of the lines; that is, the principal lines between the Atlantic seaboard and Chicago engaged in that business and improved their service. In fact, they had a very good service to Chicago. Their service was always very much better for the distance hauled, as long as I can recollect it, to Chicago than it was west of Chicago, and it is to-day.

Q. Was Mr. Stubbs one of the instigators of that improvement after 1901?

A. I do not know as he was.

Q. Can you think of any particular individuals in the railroad business that took a prominent part in that effort to make that

through all-rail service as good as the Southern Pacific had made it Sunset service?

A. As I said, the lines leading from here to Chicago, the Pennsylvania, the New York Central particularly, and the Erie, have an expedited merchandise service, a fast service; they have had that for years. They had that in at the time that we first began to make an effort to get seaboard business. They did not have to improve their service very much. The improvement had to be west of Chicago. They had made no great effort to secure the California traffic as against the Sunset Route, because the service could not be equalled under the arrangements they had with the western lines; but in the beginning, of course, it was not any very effective competition, because the western lines were not in condition to equal the service of the Sunset Route; but they gradually got better and improved their roadbed and improved their plant generally, and got into a position to render good service; and with that was the improvement in billing, the making of the through way bills and the prompt settlement of claims and avoiding transfers.

2033

Q. In what sort of shape are the Iowa lines?

A. The Iowa lines—most of the Iowa lines—are in very good shape; the trunk lines crossing Iowa, the North Western, the Milwaukee & St. Paul, and the Burlington.

Q. How long has that been so?

A. The North Western for a great many years and the Burlington has always been up in pretty good shape. The Milwaukee & St. Paul came on later.

Q. You mean a matter of twenty years or twenty-five years?

A. I should say that the North Western has been up in fairly good shape, comparatively, for twenty-five years. Of course it is in much better condition to-day than it was twenty-five years ago, compared with the condition of lines generally during the time.

2034

Q. The difficulties in bringing up the all-rail service into shape equal to the Sunset service were with the lines west of Omaha particularly?

A. West of Chicago. Well, west of Chicago, I would say.

Q. And that made it largely west of Omaha, did it not?

A. Yes; west of Omaha and west of the Colorado junctions; some of the lines connected through Colorado with the Denver & Rio Grande.

Q. How long has the Union Pacific been in good condition?

A. I could not say as to that. As long as I remember.

Q. Was the Union Pacific a first-rate road in 1887?

A. It was in very much better condition than the Atchison—that is what I judge it by—and the Atchison really had to be built up to the Union Pacific standard, and the Central Pacific.

Q. Take it from 1887 on, the Union Pacific, for its time, has always been a first-class road, has it not?

A. It has. The Ogden route has always given very good service. That has been my experience.

Q. Have you any idea what proportion of the Sunset freight between California and the Atlantic seaboard originates or is destined north of Tehachapi?

A. I have not; except, from my general knowledge, I would say the greater volume is north of Tehachapi.

Q. The reason that locomotives and freight cars and passenger cars can not move over the Sunset Route is because they require an all-rail route. Is that correct?

A. Locomotives usually move on their own wheels. It would be rather an odd matter to swing a locomotive onto the boat and then from the boat onto the rails again.

Q. And the same is true of the cars?

A. The cars are not readily transferred. There is great danger of damage if you transfer them. I should say that to bring them onto the boat and take them off again would be to go to much risk. They are bulky, besides, and I doubt whether the boats could handle them, on that account.

Q. And all the different classes of freight which you have mentioned as classes that can not be moved by the Sunset Route are those which it is either dangerous or impracticable to tranship from rail to boat or vice versa?

A. That is correct.

Q. And that is the only thing, barring perhaps some things that can not stand the heat of the South, that stands in the way of moving through freight over the Sunset Route?

A. That is correct.

Q. Do you happen to know whether there is any very heavy movement of explosives from the Pacific coast to the Atlantic?

A. There is not.

Q. How about the other way?

A. There is not a very heavy movement in either direction.

Redirect examination by Mr. HERRIN:

Q. Mr. Chambers, you were asked in cross-examination concerning the arrangement between the Atchison and the Southern Pacific by which there was joint use of the Southern Pacific track between Bakersfield and Mojave; and it was suggested that similar arrangements might be made between the Central Pacific and the Southern Pacific in case of separation of those lines. Do you think the joint arrangement of the track between Mojave and Bakers-

field presents any such case as would be presented by the separa
of the Central Pacific from the Southern?

A. No; it does not. There is practically no traffic on that line b
tween Bakersfield and Mojave; that is, there is none that origina
there to speak of except at Tehachapi, where there is some line.

Q. You used the illustration that it was practically a bridge acr
the mountain?

A. Yes.

Q. With but little, if any, local traffic between the two poi
Bakersfield and Mojave?

A. Yes; I had that in mind; that for a distance of 40 or 50 mi
if there is anything of that kind in there, the two lines might use it.

Q. Is that anything like the condition that would be met in t
case of the separation of the Central Pacific from the Southern a
making joint arrangements?

A. No, sir; it is not.

Q. In all your experience do you know of any case similar to t
separation proposed, of the Central Pacific from the South
2038 which has been accommodated by joint traffic arrangem
between the two companies?

A. No; I do not.

Q. You know that there are through passenger and freight tra
operated over these lines that pass from the Southern Pacific to t
Central, and from the Central to the Southern, both between S
Francisco and Portland and between San Francisco and Los Ange
do you not?

A. Yes.

Q. You also know there are a number of Southern Pacific bra
lines that are not connected with any line except the Central Pac
line?

A. Yes.

Q. Do you think it is practicable to make a joint arrangement f
the operation of those lines under separate ownership by the two co
panies which would maintain anything like the present service, wh
is effected by the Southern Pacific Company operating the li
itself?

A. As a whole, I would say it is not.

Q. It is not practicable?

A. No, sir.

Q. These joint arrangements are generally made concerni
2039 a single piece of track, are they not? Or do they combine
main line with all the branches, such as we have here?

A. They are usually made with a single piece of track, and for
considerable distance—enough distance to justify it on the basis o
saving in capital account.

Q. You said the Ogden route had always given good service. By hat you included the Central Pacific as a part of the Ogden route?

A. Yes, sir.

Q. As a matter of fact, as far as you know, has not the Central acific been maintained pari passu with the Union Pacific, and subantially in the same condition, as to efficiency, from the beginning?

A. That is my understanding, and that is my experience. I never eard of any difference between them.

Q. Has not generally the traffic over the Central Pacific and Union acific been of greater volume than the traffic over the Sunset line?

A. Yes, sir.

Q. Always, has it not?

A. Yes, sir.

040 Q. And has not the Central Pacific and Union Pacific track been maintained at a higher standard, as a rule, than the racks of the Sunset Route—heavier rail and otherwise better adapted or good service?

A. I would say yes; that is my general understanding, although I ave never heard much objection to either one.

Q. But, other things being equal, the care of maintenance is in proortion to the amount of traffic you have to handle over a line?

Mr. McClennen. The petitioner objects to that as leading and calling for an opinion and a multitude of figures that the witness can ot possibly have knowledge of, and which had better be shown from he accounts of the defendant.

(By request, the pending question was repeated by the reporter as bove recorded.)

The Witness. Yes, sir.

By Mr. Herrin:

Q. That is, your main lines are always maintained, or usually naintained, at a higher standard than the branch lines?

A. Yes, sir. The needs of a passenger service largely control in the building up of the roadbed and tracks; that is, the business 041 that is sensitive to the condition of the roadbed and the tracks. That is what I judge the Central and Union Pacific route by. That has always been the principal passenger route of the Southern Pacific Company.

Q. And it always has been the principal passenger route transcontinentally, really, leaving out, of course, the Atchison as a very formidable competitor?

A. Not very effective yet as to northern California.

Q. There is no doubt of the position and prestige of the Central-Union Pacific line as a passenger line—transcontinental?

A. No.

Q. You spoke of using the Northern Electric and the Califo Transportation Company and the Oakland, Antioch & Eastern connections. I suppose you mean you have traffic arrangements w those lines for the interchange of freight?

A. Yes; we have joint rates in effect.

Q. You have joint rates in effect which gives you those lines purposes of securing freight from the points reached by them?

A. From the points reached by them and in competition with Southern Pacific.

Q. In competition with the Southern Pacific?

2042 A. Yes; as to points reached by the Southern Pacific and electric lines.

Q. The Sunset line has always had, from its beginning, a consi able local business, has it not?

A. Yes.

Q. I mean a business reaching to the mines of Arizona, New M ico, and other local business originating in that territory, and also Texas?

A. Yes, sir.

Q. So that the projectors of that line probably had in view th local business as a part of the inducement to their building a li and did not confine themselves entirely to securing a line to re transcontinental business?

Mr. McCLENNEN. The petitioner objects to the question as leadi and as calling for the opinion of this witness as to the attitude the projectors of this road.

The WITNESS. I do not know what they had in mind, but it is fact that the line does have that business, and it is increasing.

By Mr. HERRIN:

Q. You know that at the time they built this line into Ar

2043 zona, Arizona was quite an active mining territory; there w exploration, and a good many mines were being operated that territory?

A. Yes. Southern Arizona was quite a mining territory. The was a good deal of mining in the territory.

Q. And therefore it furnished a market, naturally, for the pro ucts, the machinery, and other supplies, which could be supplie from California?

A. Lumber was the principal thing that came from there—mini timbers.

Q. It was a very important outlet then, giving a market for Ca fornia for these supplies that were being used largely in Arizona?

A. It helped California in that respect. What Arizona produc at that time—and afterwards, very largely, the bullion—went to th Atlantic seaboard to market.

Q. Yes.

A. And that has kept up until to-day.

Q. A large tonnage of that sort?

A. And an increasing tonnage.

Q. When the Atchison joined the Southern at Deming their business moved freely between those lines; there was an interchange of business, was there not, from the beginning?

2044 A. Yes.

Q. Did the Southern Pacific facilitate that interchange, so far as you know?

A. So far as I know they did; yes, sir.

Q. And before you had your rails in northern California you secured arrangements with the Southern Pacific Company which enabled you to reach the northern California points through traffic arrangements?

A. Yes.

Mr. HERRIN. I think that is all.

Recross-examination by Mr. MCCLENNEN:

Q. Mr. Chambers, one of the chief lines of the Southern Pacific Railroad which would be of importance for use in connection with the Central Pacific Railroad as an independent railroad is the Benicia cut-off, is it not [indicating on map]?

A. Yes, sir.

Q. One of the most important lines of the Central Pacific Railroad for the use of the Southern Pacific is the line to Tehama, north to the State line?

2045 A. I would say so; yes, sir.

Q. Those lines are both of them longer in extent than the section of the Southern Pacific line over which the Atchison now operates under the trackage arrangement you have?

A. One of them, I think; I have no doubt. The distance from Sacramento to San Francisco I think is perhaps about the same.

Q. Is it not about ninety miles from Sacramento to San Francisco by the Benicia cut-off?

A. Yes; I think it is. Ninety miles is considered the distance between San Francisco and Sacramento.

Q. What occur to you as the chief difficulties in the way of having the Central Pacific operate over the Benicia cut-off under a trackage agreement with the Southern Pacific?

A. Having just the right to run its trains over the track?

Q. Just the right to run its trains over the track, and not participate in the business?

A. Just the right to run its trains over the track?

Q. And not participate in the local business.

A. There is no serious difficulty in doing that, if they can arra
about the terminals.

2046 Q. Would there be any difficulty in making the arra
ment with the Central to use the line north from Tehama
its through business from Oregon to San Francisco?

A. I could not say whether there would be any serious diffic
in making the arrangements. So far as running their trains over
track is concerned, there would be no difficulty.

Q. Apart from these two lines I have mentioned, the Benicia
off and the line north from Tehama, what important piece of tr
is there that either road would need belonging to the other to
duct through operations with reasonable facility?

A. You mean through operations to certain points?

Q. Well, take, for instance, from San Francisco to all Or
points, the line from Tehama to the north boundary of the St
is the only line of the Central Pacific that the Southern Pacific wo
need?

A. That is all they would need, under the conditions that
say.

Q. Now, take it from San Francisco to Los Angeles, either d
the coast line or down the valley line. The Southern Pac

2047 would need no rails of the Central Pacific, would it?

A. No; they could reach over there through Los Angeles.

Q. There are certain branches belonging to the Southern Pac
off-shooting from the Central Pacific in the San Joaquin Val
You see them noted here on the map in red. The Central Pacific
shown by the darker lines. Those branches are all of them relati
short branches, are they not?

A. Yes.

Q. In the natural order of things, it would be a reasonable busi
arrangement to have those branches either transferred to the Cent
Pacific or operated directly by the Central Pacific under some app
priate arrangement, would it not?

A. I do not know whether I just get what you are after. T
difficulty of separating those two and the objection that I se
separating them in the San Joaquin Valley is that you would
arrange their train service. Whereas it is now through service fr
Bakersfield; you would go around on what you might call bra
lines, going around through Portersville and up to Fresno, wh
you now perform the local service with through trains. T

2048 trains are routed so as to run the farthest distance a
include just as many stations as is reasonably possible, s
when you disarrange that service it is pretty hard to figure out j
what you have got to do to give service from one part of the va

o the other. I could not tell without going in and analyzing. They have service between San Francisco and Fresno that comes down he east side line; and then they have service from Fresno and Bakersfield, that goes down the west side line or the east side line; nd they have a complete service, through route and complete serv-ce. You see that serves all these branch lines up through here [indicating on map]. Starting down at Bakersfield, they can run a train that will serve the east and west side lines there between Fresno and San Francisco.

Q. The train you have described coming around the west side, around through Bakersfield, travels all the way over Southern Pa-cific rails, does it not?

A. Yes. It would help out on this service here from Fresno to San Francisco. It gives you another train from Fresno to San Francisco.

Q. But it is all on Southern Pacific track?

A. Yes; it would be that way. But to-day the most impor-2049 tant service, I think, between northern and southern California is operated over the Central Pacific track.

Mr. HERRIN. That is right.

By Mr. MCCLENNEN:

Q. From what point to what point?

A. From Lathrop down to Goshen Junction.

Q. So far as through service is concerned, the Southern Pacific has another line all the way from Goshen Junction into San Fran-cisco, has it not; and the only thing that would not be served by that would be local service to the Central Pacific track between Lathrop and Goshen Junction?

A. Well, the Southern Pacific's service between Bakersville and Stockton would be, I think, impaired. They could not make the same time around by this line that they get over this through line.

Q. Between Bakersfield and Stockton?

A. Yes; or between Bakersfield and San Francisco the service would be impaired.

Q. Could they not make the same time between Bakersfield and San Francisco?

A. I think not, because they would have to go around this way [indicating on map].

Q. They could go around——

2050 A. They would have to go around here. Their important trains do not run around that way—their fast trains.

Q. The only part that they would be excluded from would be from Goshen Junction, from Fresno, Merced, and Lathrop; is not that true?

A. That is their best time in the valley north of Bakersfield.

Q. And they are natural Central Pacific points as the trac laid?

A. Yes; and then these others are built out from there; feed really, to that line, or connecting these east and west side lines those principal towns in the valley.

Q. The line from Tulare to Visalia, to Fresno, and up the side of the valley is a complete line in itself?

A. That is a complete line, but that is not the important line, the Southern Pacific to-day is moving through the San Joa Valley.

Q. That is, you mean that the Central Pacific line enjoys the c shipping points in that valley?

A. So far as it goes, yes; north of Bakersfield.

Q. In making your answer about what was practicable on separation of these roads were you aware of the contr

2051 that was made between the Union Pacific and the Cen Pacific and the Southern Pacific in February, 1913?

A. In a general way I was aware of that.

Q. Did you know what provision was made in that agreement the joint use of the terminals?

A. In a general way; yes.

Q. And for the use of the indispensable lines for through servi

A. As to that, in a general way, I did; yes, sir.

Q. Did you know of anything from a railroad standpoint th was impracticable about such an agreement?

A. Well, I understand there was a great portion of it that to be worked out, that was not complete; all the details had been agreed to.

Q. In the part that was complete, did you know of there be anything that was not practicable as a railroad matter, in the p that they had reached?

A. As to the terminals?

Q. Yes.

A. And the use of lines from Sacramento to San Francisco Benicia?

Q. Yes.

A. It seemed to me that would work out all right.

2052 By Mr. HERRIN:

Q. There is one important matter that differentiates th case from the Tehachapi main line, which is that there is local tra on all these lines of the Central Pacific and Southern Pacific, there not?

A. Yes.

Mr. McCLENNEN. The petitioner objects to the question as leading.

By Mr. HERRIN:

Q. And one of the things that facilitated your agreement over the Tehachapi was that there was substantially no local traffic?

A. Yes. When I answered as to the line between Sacramento and San Francisco I understood the Central Pacific would simply have running rights for their trains over that line, and that they were not to participate in the traffic that originated on that line.

Q. But if they were to make an agreement to run the trains between California and Oregon over the Central Pacific from, say, Tehama to the Oregon line, you have rather important communities and towns intervening those two points which require railroad service?

2053 A. Yes.

Q. And if you deny them the use of these through trains which pass over that line, you have lessened very much the service that you can give them on the local lines?

A. That is what I say as to the whole proposition.

Q. Yes.

A. That you can not separate those two that have been built up as one, without interrupting the service very seriously, and without increasing the cost of doing the business and without increasing the rates.

Q. Another very important feature of the trains between Los Angeles and San Francisco: The Southern Pacific at present gives a local service to the important points in the San Joaquin Valley, such as Madera and Fresno, by these through trains, does it not?

A. Yes.

Q. If you took the through trains off of that line, you would practically sidetrack those important points and put them on a local line?

A. You would have substituted local service for the through service.

2054 Mr. McCLENNEN. The petitioner objects to the question as leading and as overlooking the fact that the sidetrack might be the Atchison.

By Mr. HERRIN:

Q. What was the answer?

A. The local service would have to be substituted on these branch lines or those parallel lines on the east and west of the San Joaquin Valley for the through service that had served them locally.

Q. And that would put those towns on practically a local service, an inferior service to what they get now?

A. Some of them.

Q. As compared with what they get now with the through serv
A. Yes.
Q. Then, again, the freight that is moved from the South
Pacific line south to Tehama down to Davis, to points in the S
Joaquin Valley, the Southern Pacific lines in the San Joaquin Val
now readily moves, as you understand, via the Central Pacific int
vening lines, but after the separation how could that move with
sending it down to Port Costa, ferrying it there and sending it do
the Southern Pacific line?
2055 A. It could not.
Mr. McCLENNEN. The petitioner objects to the question
the ground that it is leading.
The WITNESS. That is the only way it could be moved, over
Southern Pacific rails.

By Mr. HERRIN:

Q. What would you say about that service as to its being as g
as that now given by the use of the Central Pacific lines between th
points?
A. I assume that it is a longer route, from my own knowledge,
that it would take a little longer time to move the traffic.
Q. If it was longer, would not that be objectionable?
A. Yes; it would.
Mr. HERRIN. That is all.

By Mr. McCLENNEN:

Q. Do I understand you to say that these through trains to L
Angeles do all the local business in the valley?
A. Not all. They do a good share of the local business. You c
take a train at Los Angeles and go through to almost any point in t
San Joaquin Valley on the Southern Pacific lines to-day. Th
2056 is, you can go via Porterville, take out of Bakersfield—that i
on the east side line—and go to Fresno and go up the w
side line from Fresno or by the other line via Goshen up to Fres
and up to Lathrop.
Q. That is to say, one of the local trains now runs from Porterv
down to Fresno and up the west side line [indicating on map]?
A. I think that goes up the west side line. That is my recolle
tion. I know it does run through Porterville and up to Exeter a
up to Fresno.
Q. Anybody wishing to go from Los Angeles to a point on th
Central Pacific Railroad would have to leave that train at Fresno
some other common point and take the Central Pacific train to th
station on the Central Pacific?
A. Yes. The Southern Pacific aims to serve those parallel lines
the San Joaquin Valley largely with a through service between L

Angeles and San Francisco, and between Bakersfield and San Francisco; so that they operate the trains, some of them over the west side line and then through Fresno, and they switch onto the east side line and go down to Bakersfield.

Q. Then they run some up the coast line, do they not?

2057 A. Some up the coast line via Santa Barbara to Los Angeles.

Q. Yes.

A. Yes.

Q. And you say they use these through trains for the local service?

A. They use them largely. They have a number of local trains, in addition, as there is a heavy traffic between Los Angeles and lower points in the San Joaquin Valley, up to and including Fresno in both directions.

Q. Is there much traffic from Los Angeles to the points in the San Joaquin Valley above Fresno?

A. No.

Mr. McClennen. That is all.

(Witness excused.)

(Whereupon, an adjournment was taken until to-morrow, Tuesday, April 20, 1915, at eleven o'clock a. m.)

2058 TWENTY-FIFTH DAY.

Room 2506, 165 Broadway,
New York City, Tuesday, April 20, 1915.

The hearing was resumed, pursuant to adjournment, at 11 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pacific Company.

2059 John W. Griggs was called as a witness on behalf of the defendants, and having been duly sworn, testified as follows:

Direct examination by Mr. Herrin:

Q. General Griggs, you were Attorney General of the United States in the year 1899, were you?

A. Yes.

Q. When did you take that office?

A. The latter part of January, 1898. I think my commission is dated January 31, 1898.

Q. Who preceded you?

A. Joseph McKenna, now Justice of the Supreme Court of the United States.

Q. How long did you hold the office of Attorney General?

A. Until April 1, 1901, having been reappointed on March 4, 1901.

Q. And President McKinley was President during your incumbency as Attorney General?

A. Yes.

Q. Do you recall having anything to do with the settlement of the indebtedness of the Central Pacific Railroad Company to the United States of America during your term of office?

2060

A. Yes.

Q. Do you recall signing the agreement that was made of date February 1, 1899, between the United States of America, acting by the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, of the first part, and the Central Pacific Railroad Company, of the second part, and Messrs. Speyer & Company, bankers, of New York, of the third part?

A. I remember that.

Q. Did you sign that agreement as Attorney General?

A. Yes.

Q. Do you recall the negotiations, if any, which led up to that agreement?

A. Yes; I recall, I think, the main facts connected with the negotiations. Probably a great many of the minor details have escaped my memory.

Q. About how long were those negotiations in progress, as far as you can recall?

A. I should say from a period in 1898, probably the middle of the year, until the agreement of February 1, 1899, was consummated and executed.

2061

Q. You will recall that the provision of law which authorized the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General to act as a commission was in the appropriation bill approved July 7, 1898?

A. Yes.

Q. These negotiations, therefore, began after that time?

A. I am not quite sure about that. I am not quite certain but what there were negotiations before that; because the subject of the enforcement of the Government liens against the Pacific railroads generally, including the Union Pacific, had been in the mind and in the hands of the Department of Justice for a considerable period, even before I came there; and I have some recollection that my first interview with Mr. Speyer antedated the date of that act of July 7, 1898; but that is vague.

Q. With whom did these negotiations occur, so far as you remember? What parties participated in them?

A. Mostly, so far as I took personal part in them, with James Speyer, of Speyer & Company, of New York; and I recall now one occasion when the matter was discussed by Mr. Huntington,
2062 who, I think, was then president of the Southern Pacific Railroad; I think it was Collis P. Huntington.

Q. Yes.

A. At the Cabinet Room, in the presence of Mr. McKinley and myself.

Q. That is President McKinley?

A. President McKinley. But the greater part of the negotiations that I remember were conducted through James Speyer.

Q. Were there many of those interviews?

A. Oh, I can not recall definitely, but the matter extended over a considerable time, and just how many times I conferred with Mr. Speyer or conferred with my associates, the Secretary of the Treasury, or with the President I do not know; I can not say. The matter was one that was deemed of great importance to the Government at that time, and when I first went into the department the President directed me to give immediate attention to the Pacific Railroad debts and to take every means that I thought necessary and spend as much money as I needed and do whatever was necessary to enforce the Government liens.

Q. I call your attention to the fact, which is in evidence in
2063 the case, that in the committee reports of both Houses of Congress, bearing date in the year 1896, these committees had recommended extensions for the payment of this indebtedness on the following terms——

Mr. McCLENNEN. Which one are you reading from, Mr. Herrin?

Mr. HERRIN. I am reading, really, from the answer, which is a correct summary of the reports which were put in evidence, and much briefer than the reports.

Mr. BLAIR. That is the report of 1896.

Mr. HERRIN. That the company (the Central Pacific Railroad) was to pay "$365,000 per annum on account of principal for ten years from 1898 to 1908; $550,000 per annum for ten years from 1908 to 1918; and $750,000 per annum each year thereafter until the entire debt should be extinguished."

Besides those payments they were, of course, to pay interest at two per cent per annum on deferred payments.

In your duties as Attorney General I suppose you were familiar with the reports or had some knowledge of them?

The WITNESS. I remember when the matters were especially put in my personal charge at the department, getting all the reports,

2064 acts of Congress, and other public matters relating to the s
ject, both of the Union Pacific and of the Central Pacific a
Western Pacific and familiarizing myself with them. I can not t
you now what I ascertained, because I have forgotten.

By Mr. HERRIN:

Q. This act of Congress which authorized this commission
which you were one member to settle this debt provided that y
should not allow longer than ten years for the payment of t
debt. That you recall?

A. Oh, yes.

Q. And that you were also required to collect the full amount
the debt without any abatement?

A. Yes.

Q. And that you should exact at least three per cent per ann
interest?

A. Yes.

Q. Do you recall that this act also provided that you were
take such security as "to said commission may seem expedient"?

A. Yes.

Q. These negotiations which you have mentioned resulted
2065 the agreement of February 1st, to which I have called your
tention?

A. It did. I think I ought to say, Mr. Herrin, referring to th
act of July 7, 1898, that I have a strong impression that that s
or the provision of the appropriation act, was drawn and passed
fit a tentative agreement which was the result of negotiation that h
already been had.

Q. Very likely.

A. I have a strong impression to that effect, but I can not be qu
sure of it.

Q. Do you know whether or not that agreement was carried out?

A. It was.

Q. Were the bonds of the Central Pacific Railroad Company
its successor deposited in the amount required by the agreement wi
the Secretary of the Treasury?

A. You mean the four per cent refunding bonds?

Q. Yes.

A. I was informed so by the Secretary of the Treasury at th
time, he being the custodian. They were not deposited with me.

Q. Did you thereafter make a report to Congress, as you reca
which referred to this subject?

2066 A. I think I did in my annual report, and possibly a spec
report, but I do not recall.

Q. Have you a copy of that report with you?

A. No; I have not.

Mr. McCLENNEN. I have a copy of that report here, I think.

Mr. HERRIN. I have the report. I have it before me.

By Mr. HERRIN:

Q. I call your attention to the report of the Attorney General dated "Department of Justice, Washington, D. C., November 30, 1899," which is signed by John W. Griggs, Attorney General, in the printed volume issued by the Government, and I refer especially to that part of the report which is upon the subject of "Pacific Railroad matters," at page 30, and extending down to the top of page 33.

A. (After examining document.) Yes; I have read it.

Q. That is the report, is it?

A. Yes, sir.

Mr. HERRIN. I wish to offer in evidence that part of the report of the Attorney General which is under the head of "Pacific Railroad matters", on page 30, down to the heading "Judicial salaries",
2067 on page 33. I am willing to exclude the part of it that refers to the Union Pacific, but it does not make much difference; it is not very long, and it had just as well all go in, I think; but there is a clause at the end which refers to both.

Mr. McCLENNEN (after examination of report). I think it would be just as convenient to put the whole of it in.

Mr. HERRIN. The reporter may copy the extract from the report, and it may be marked as Exhibit No. 53. The extract to be copied begins on page 30, with the heading "Pacific Railroad matters", and runs down to page 33, ending just above the heading "Judicial salaries". Mr. McClennen, is that the report you have?

Mr. McCLENNEN. No; the one I have is earlier.

The WITNESS. Did I make a special report, or was it the Secretary of the Treasury?

Mr. McCLENNEN. You made a report as commissioner to your authorizing body; not as Attorney General.

The WITNESS. I had forgotten it.

(The extract referred to was marked "Defendants' Exhibit (Griggs) No. 53, April 20, 1915", and will be found in the volume of defendants' exhibits.)

2068 By Mr. HERRIN:

Q. In this report which we have just introduced in evidence it is stated that on October 7, 1899, bonds were delivered to the Treasury Department by the Pacific Railway Company to secure the outstanding notes held by the Treasury in conformity to the terms of the agreement of settlement. That, I suppose, fixes the date when these bonds were received by the Treasury Department?

A. I suppose that is correct.

Q. I call your attention to the form of the bonds that were d
posited, and particularly to the guarantee of the Southern Pac
Company printed upon those bonds, and ask you if you know an
thing about that guarantee.

A. (After examining bond.) That is the form of the guaran
that was approved by the commission—I assume approved by the
At any rate, the bonds were accepted with that guaranty.

Q. And you had to do in your negotiations with the form
guaranty that should be given to the Southern Pacific Company?

A. I do not remember. I have no doubt I had to approve
2069 but I do not remember. I will say with respect to that th
the agreement that we made provided that the bonds deposi
as security should be such bonds as were described in the plan
readjustment or settlement put out by Speyer & Company, and th
plan described those bonds as guaranteed by the Southern Pac
Railroad, as I recollect.

Q. You saw that plan of readjustment, did you?

A. Oh, I have no doubt I did.

Q. The agreement of February 1st recites that contracts wh
had been made with stockholders and bondholders prior to th
time had been furnished to the Government of the United States?

A. Yes.

Q. And thereafter, as those contracts were completed and of la
date, were you not furnished with similar contracts?

A. I have no doubt I was, but I can not recall that.

Q. In this negotiation, was it conducted in part or at all b
written correspondence?

A. I do not think so.

Q. Generally by personal interviews?

A. By personal interviews.

2070 Q. But if there was any correspondence up that subject
where would that correspondence be?

A. If it were from my department, it would be in the Departme
of Justice in Washington.

Q. You did not take away with you any of the official corr
spondence?

A. Oh, no.

Q. You left your files intact?

A. Yes.

Q. When you left the office?

A. Yes.

Q. In your office in Washington?

A. Yes.

Mr. HERRIN. Take the witness.

Cross-examination by Mr. McCLENNEN:

Q. Your recollection places your meeting Mr. Huntington on this matter as on one occasion only?

A. That is all I recall.

Q. Have you any recollection of what took place at that interview?

A. No, except I have a recollection that it related to the sub-
2071 ject of the settlement of this Southern Pacific and Western Pacific debt.

Q. You are using "Western Pacific" to describe the old Western Pacific railroad corporation which was one of the bond-aided roads in California?

A. My recollection is that the Central Pacific and the Western Pacific were in some way jointly involved in this; just how I do not recall. You will see that the agreement we made relates to the Central Pacific and Western Pacific.

Q. Could you place at all at what stage of the negotiations your interview with Mr. Huntington took place?

A. No.

Q. In the main, your dealings were with James Speyer exclusively?

A. Yes.

Q. Were they conducted by you alone, or by all the commissioners together?

A. I think mostly by myself, and my recollection is that I, after discussing with him the details, reported them to Mr. Gage. I do not recall that Mr. Bliss, the other commissioner, took any part in
it except to agree to what Mr. Gage and myself and the Presi-
2072 dent, who took a somewhat active interest in the matter, did.

Q. Did the President, within your knowledge, meet the other parties except on the one occasion that you speak of?

A. I think I saw the President with Mr. Speyer. I have quite a distinct recollection of seeing the President with Mr. Speyer.

Q. Was there anything to indicate that the President ever took any part in the negotiations out of your presence?

A. Only what he said.

Q. Well, if it is not going too far, did he say anything indicating that he had conducted any negotiations?

A. Yes; he spoke of having conferred with Mr. Huntington and having seen him about the matter.

Q. At some time other than the one occasion you saw him?

A. At some time other than the one occasion when I saw him.

Q. Did he inform you as to what had passed between him and Mr. Huntington on that occasion?

A. I do not recall.

Q. Mr. Elihu Root had something to do with this matter?

A. Yes; Mr. Root was employed by me under authority
2073 I had from the President to employ special counsel, to prep
a bill of complaint to be filed, to foreclose the Governm
lien, and he did prepare such a bill, my recollection is, and submi
it to me; but it was never filed, because the settlement interve
before we got to that point.

I may also say, if it is of any interest to you, that the commi
represented by Speyer & Company refunded to the Government
fee that they had paid him as a part of the settlement, which is
mentioned in the papers. I got that out of them.

Q. Was the drafting of that foreclosure bill before the passing
the act of July 7, 1898?

A. I should think that Mr. Root had been employed before t
but whether the bill was actually drafted prior to that, I can
tell.

Q. Did Mr. Root take any part in the negotiations or the set
ment?

A. No; I do not think he did.

Q. Did he take any part in committing those negotiations to l
form?

A. I do not think he did.

Q. By whom was the agreement of February 1, 1899, draft
2074 A. That I do not remember; but I think it was drafted
somebody acting for Speyer & Company, and submitted to
for approval or emendation.

Q. And did you personally consider the draft?

A. I can only say I must have done so; but I have no recollecti

Q. Can you say that it embodied all the agreements that had b
made relative to the settlement?

A. I think it did.

Q. When you stated your recollection of what the agreement ca
for with reference to the character of bond to be delivered, you w
merely stating your recollection of that written instrument?

A. Yes.

Q. Not intending to state any agreement dehors that instrume

A. That instrument was the embodiment of agreements arrived
previously.

Q. And embodied all of them?

A. As far as I know; yes. That is to say, we undoubtedly thou
that it carried out the object of the Government in collecting its d
or securing its payment, as we had arranged to have it secur
2075 Q. I call your attention to House of Representatives Do
ment 238, 55th Congress, third session, entitled "Indebted
of the Central Pacific and Western Pacific Railroads. Report of

commissioners appointed to settle the indebtedness to the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific Railroads, February 20, 1899. Referred to Committee on Pacific Railroads," and being a report dated February 15, 1899.

Before questioning you on it, I will put it in evidence as petitioner's exhibit No. 77.

(The document referred to was marked "Petitioner's Exhibit (Griggs) No. 77, April 20, 1915", and will be found in the volume of petitioner's exhibits.)

Mr. McCLENNEN. It is stipulated that in copying this exhibit the agreement contained in it need not be recopied, it being a copy of defendants' Exhibit A of the answer.

Following the agreement, however, there should be copied the acknowledgment clause, which is not copied in the answer.

By Mr. McCLENNEN:

Q. The particular thing at this moment to which I wished
2076 to call your attention was that this report and the agreement itself contains no reference to the Southern Pacific Company or to any guaranty to be made by the Southern Pacific Company.

Having that called to your attention, is it not the fact that the guaranty of the Southern Pacific Company was not a matter which the Government exacted?

A. I would have to answer that no. I will explain that. My recollection is that the guaranty of the Southern Pacific on those bonds was one of the agreed parts of the negotiation, the Government relying upon that as an additional security or guaranty to see that their debt would be paid, either by the new corporation that was to be formed and to issue these bonds, or by the guarantor, the Southern Pacific Company.

Q. If your recollection were not at fault in that respect, how is it possible that you should have passed, as the final agreement, one which did not, by reference or otherwise, call for any such guaranty, but merely called for first mortgage bonds?

A. I do not think we did. The agreement, as I recall, of February , 1899, provided that we were to receive as collateral security such
2077 bonds as were described in the Speyer prospectus; and in that prospectus, as I understand the agreement, whatever it was, the Southern Pacific had agreed to guarantee those refunding fours.

Q. Will you not look through the agreement itself, seeing that your recollection has played you false with reference to that particular matter, and that the agreement does not contain that provision, but merely provides that the bonds that you shall receive as security

shall be first-lien bonds, part of an issue not exceeding one hund million dollars par value?

Mr. HERRIN. I call your attention, Mr. Griggs, to the third fourth paragraphs of the agreement; the fourth especially.

The WITNESS. Yes. The third paragraph of the agreement vides that the payment of the principal and interest of the notes s be secured by the pledge of first refunding mortgage four per gold bonds, issued by the Central Pacific Railroad Company o successor company having title to the aforesaid railroads, such b to be part of an issue hereinafter described, not exceeding one h dred million dollars in all.

Then, on the next page, it describes said bonds are to run
2078 at least forty-five years, to bear interest at the rate of per cent per annum, payable semiannually, and to be pay in gold coin, and are to be of an issue not exceeding one hundred lion dollars, secured by mortgage upon all the railroads, equipm and terminals now owned by the Central Pacific Railroad, and s be a first lien, and so forth.

Now, my understanding of that was, Speyer & Company bein party to this agreement, the deposit of the various underlying b and stocks and so forth being recited, the agreement of reorgan tion or scheme or prospectus being in our possession, showing t these bonds were to be guaranteed by the Southern Pacific, th were the bonds that we meant when we described the four per refunding bonds.

I should say our assumption was that the description there rel to the bonds that were described in that agreement, and it was part of the one scheme, which we knew at the time from negotiati with Mr. Huntington and from familiarity with that document, w actually being put through by the efforts and on the responsibi of the Southern Pacific.

By Mr. MCCLENNEN:

Q. Perhaps I have not made clear to you the distinct
2079 which I have in my mind. It is this, not that you not have known the probability that the Southern Pacific C pany was going to guarantee the bonds which Speyer & Comp were going to put out as part of the reorganization scheme, but t the insistence of the Government upon such a guaranty was n prerequisite to the acceptance by the Government of the bonds.

A. Well, speaking of the matter as it appears in the contract am not prepared to argue whether we would have been entitled reject bonds that were offered as security without the guaranty the Southern Pacific; but, as a matter of fact, that was in the templation of the parties when the agreement was signed; I sho say that nothing short of that would be acceptable.

Q. Having in mind the infirmities of human recollection in the best of us, and the probability that you would see that the contract, before you signed it, contained all the essential agreements that had been made, is it not probable that if the guaranty of the Southern Pacific Company was a part of the Government's or the commission's exactions that you, when seeing that the contract provided for the character of bonds that they should be first-lien bonds, that they
2080 should not exceed one hundred million dollars, that they should have such times and rate of interest, would also have seen that the contract provided that they should be guaranteed bonds if you then had deemed that that guaranty was a part of that upon which you commissioners were insisting?

A. That might be argued from the face of the papers, but as against that I have the very clear recollection that the bonds were to be guaranteed by the Southern Pacific, and that we thought the agreement was efficient to secure that. Whether it would have turned out, on a law suit, to be efficient or not is another matter, but that we thought it was efficient there is no doubt.

Q. I call your attention to the provisions of the fourth paragraph of the instrument, describing the character of bonds, where it says: "The said refunding bonds so to be pledged as security for the payment of the said notes and interest shall be delivered to the Treasurer of the United States within a reasonable time after this settlement becomes binding for obtaining the deposit of securities, the assent of security owners and the carrying out of such plan of reorganization or readjustment as may be necessary to enable
2081 the Central Pacific Railroad Company or its successor company to issue such refunding bonds and make the mortgage to secure the same a valid lien upon the railroads aforesaid in accordance with the requirements herein expressed."

In view of that provision of the agreement, do you not recall that it was the understanding that the plan of readjustment was, and was to remain, so elastic that it could be changed in any respect which did not put it at variance with the essential provisions of this agreement as to the bonds, namely, that they should be a first lien and should not exceed one hundred million dollars in amount?

A. My idea of the object of that clause which you read is that it was to cover that which it should be found necessary to do afterwards in order to put the title of the property into some new company that could make the bonds. That had not been done when the agreement was signed. I think that was specially intended to cover the process by which that condition would be brought about.

If your question is intended to ask me whether I infer that the guaranty of the Southern Pacific might have been taken out of the arrangement, I should say decidedly not. My recollection is

2082 that that was an essential part of the agreement. The a
rangement was put through, it was enabled to be put throug
by reason of the intervention of Mr. Huntington for the South
Pacific Company. We all recognized that at the time, and we
understood that we were getting the endorsement of his company
these bonds.

Now, whether we put it in the agreement or not may be a matt
of difference of legal opinion just now; but that we were to have
and that we did get it, is a matter of positive recollection on my pa

Q. Did you understand that Mr. Huntington had any interest
this time in the Central Pacific Railroad Company?

A. I do not remember whether I did or not; but my impressi
would be that he did have or that his company had. I am not s
about that.

Q. Is it reasonably conceivable, considering your well-known c
of legal matters, that you, as Attorney General of the United Stat
would have entered into an agreement which did not distinctly c
for a guaranty by the Southern Pacific Company on bonds whi
were to be deposited as collateral, if you had then been of the unde
standing that the bonds must have that characteristic?

A. Well, that calls for a little philosophizing, I sup
2083 pose, and in that line I would say that the Attorney Gener
of the United States is a very busy man, no matter who he i
He has a great many matters to deal with, and the possibility of h
overlooking a point in an agreement, the possibility of his assumin
that it covered something which it did not specifically cover is ver
great, and I do not claim any particular immunity from that kin
of defect. I should say in this case, however, that inasmuch as th
contract may be assumed to have embodied the purpose of the par
ties, any difference as to what it actually covered was settled by th
interpretation the parties put upon it afterwards by conforming to i
I can not conceive that, if it was not a part of the agreement, tha
we should get bonds guaranteed by the Southern Pacific; that w
should really have gotten them; because I do not believe that Mr
Huntington would have volunteered, except as a part of his con
tract, to give us his guaranty, if he did not understand he was bound
to do so.

Q. You can well see how a corporation interested in the succes
of a reorganization scheme should put its guaranty upon bonds, if
thereby a point or two would be added to their market value, eve
if that company was not under contract to make any such
2084 guaranty, so far as its relations with the United States Gov
ernment were concerned, can you not?

A. Yes.

Q. Is it not, perhaps, the fact that what the United States Government was interested in was that they should get the fresh obligations and direct obligations of the Central Pacific Railroad Company, secured by a first mortgage for fifty-eight odd million dollars out of a total first mortgage of one hundred million dollars, in place of the, so to speak, second mortgage lien which they then held upon a part of the road; and that if they could get such first mortgage bonds they were willing to accept them, and if the persons who were furnishing those bonds were minded, as a part of the reorganization, to put a guaranty of the Southern Pacific Company upon them so as to increase their market price that the Government did not object, but that, if the reorganizers had found some other way to put through the reorganization, it was not to be rejected, so far as the Government was concerned if it did have the essential features, namely, a new obligation and a first mortgage lien for fifty-eight million dollars out of a total mortgage of not exceeding one hundred million dollars over the entire road of the Central Pacific
2085 Railroad in place of a second lien upon only a part of that railroad?

A. I think your question leaves out of view the fact that the Government's bargain with these people was that it should have its fifty-eight millions of dollars paid through notes that came due spaced every six months, payments which might be defaulted, in view of the conditions that had existed with reference to the Central Pacific; and in case of default, then we would have to look to the bonds that were put up as collateral, and if those bonds did not have the guaranty of the Southern Pacific, both in the market sense and in every other sense, they would not be the kind of security that the other holders of those bonds were getting, and would not have enabled us to come down on the Southern Pacific for the payment of our money. We were not looking to the collection of the money on those bonds. They were not given as a direct payment. They were only collateral to notes that had to be paid much sooner than the bonds; and if they were not paid, then we had the right to sell those bonds, and the marketability of the bonds, therefore, became important.

Q. If I followed the distinction which you made in the lat-
2086 ter part of your answer, you were indicating that it was important to the Government to get as good bonds as the general public was getting in that issue?

A. Yes.

Q. If the bonds issued to the general public in the reorganization, as a part of that issue, were not guaranteed bonds, it follows, of course, that the Government would be getting just as good bonds if it did not get guaranteed bonds?

A. But by the agreement they were to be guaranteed—I mean t reorganization agreement—they were to be guaranteed by the Sou ern Pacific. That was the description of them in the reorganizati agreement; there they were called by the same name—first refundi fours.

Q. Do you recall that at the date of the execution of this agr ment of February 1, 1899, the time of the actual execution of it, reorganization agreement had been signed by any of the reorganizer

A. I do not recall whether it had been signed or not; but this pr pective agreement, or prospectus agreement, the plan put out Speyer, was extant.

Q. Do you recall now that at the time the agreement was sign the plan of reorganization, even in circular form, had not b promulgated?

2087 A. I do not know whether it was promulgated to the pub or not, but it undoubtedly had been furnished to us, the co mission.

Q. In what form, physically, had that been furnished to you?

A. I can not tell you.

Q. Do you bear in mind seeing anything in print of that descri tion before this agreement of February, 1899, was signed?

A. I do not remember now.

Q. Do you recall seeing, in typewriting, any such plan?

A. I do not. I might say I do not recall seeing this agreeme which I signed, as a matter of memory.

Q. Of course, you understand that in the questions I am putti to you, I am suggesting these matters of argument merely to see h they may effect your testimony on the matter.

A. I understand that, certainly. You are trying to see how mu is memory and how much is inference.

Q. Precisely. It appears from the exhibits put in this case that t plan of reorganization is dated February 8, 1899; that t

2088 promulgating circular is dated February 20, 1899, that yo report on the consummation of the agreement is dated Febr ary 15, 1899, and that the agreement bears an acknowledgment February 6, 1899, by the president of the Central Pacific Railro Company at San Francisco. With those dates before you, can yo assist at all in saying on what date the agreement of February 1899, was actually executed?

A. No; I can not.

Q. It was certainly executed by the 15th of February, was it no

A. It must have been, because we reported it then as a thing don

Mr. McENERNEY. There is a statement in the report, as you wi recall, that the president approved it on the 15th of February.

Mr. HERRIN. On the 15th; yes.

Mr. McCLENNEN. Do you want to have this go on the record?

Mr. McENERNEY. Yes.

The WITNESS. It states in the report that the settlement was made as of the first day of February, 1899. It might easily be, as you all know, that an agreement which was dated the first of February
2089 might be delivered and executed subsequent to that day; but whether this was so or not, of course I do not remember. But it was approved by the president on the 15th day of February, according to this.

By Mr. McCLENNEN:

Q. Was the approval by the president the last act in the process of execution?

A. I assume so.

Q. That is, it is altogether probable that it had been executed by the company and by the commissioners before it was approved by the president?

A. No doubt of it.

Q. But how many days before, you have no present recollection?

A. No, sir.

Q. Do you remember whether, prior to the execution of the agreement, you had had left with you at any time the text of the reorganization plan of Speyer & Company?

A. As a matter of recollection, I do not.

Q. You recall, as one of the essential features of the agreement, that the existing second lien on the part of the road which was the existing security—the immediate security—of the United
2090 States, was not to be impaired until you got the actual delivery of securities described in the agreement of February 1, 1899?

A. I recall a provision on that subject. Exactly what it is I do not now remember.

Q. You recall that the notes were all to become due on default in one?

A. Yes.

Q. You recall that the only thing that the United States was giving up by the agreement was the right immediately to foreclose its second lien on part of the railroad?

A. Why, I think that would be so, except that there might be some doubt whether, after the company had been sold out under the prior lien and reorganized, the agreement to retain the old lien would be very valid.

Q. That sale was not a possibility if the new securities were delivered as provided by the agreement of February 1, 1899, was it? That is, the new securities were to be refunding securities?

A. Yes.

Q. You knew at the time you negotiated this agreement tha
there was a default in any one of these notes of the Central
2091 cific Railroad Company you could proceed, by receivership
otherwise, to get the entire railroad of the Central Pa
Railroad Company, subject only to the new refunding first-mortg
bonds?

A. Well, I do not know whether I can say that or not, now. I
not think I can say it.

Q. You knew that if any reorganization prevailed it would
doubtedly leave some one interested in the junior securities, or s
of the new company, dependent for their value upon the extingu
ment of the new first lien refunding bonds?

A. Yes.

Q. You realized that if the Government did get the obligatio
the Central Pacific Railroad Company plus substantially fifty-e
one-hundredths of a first mortgage upon the entire property, it
getting a great deal more than it gave up in yielding its second
upon a part of the railroad?

A. I am not sure whether those first refunding mortgage bond
whether the first refunding mortgage was really a first lien on
property or not.

Mr. McCLENNEN. There will be no dispute between us that
were to be. The agreement is perfectly clear on that.

2092 Mr. HERRIN. Yes; it was contemplated by the agreem
that they should be a first lien.

The WITNESS. Then, what you said would be true.

By Mr. McCLENNEN:

Q. As a matter of reasoning, then, apart from recollection, i
apparent, is it not, that the Government's position was being bett
if it got those bonds, even if they did not bear the guaranty of
Southern Pacific Company, provided they were bonds that w
equal in character to the other forty-two per cent of the
mortgage?

A. I think I can say that that would be so; but I would add t
the act of Congress required us to make a settlement that provi
for the payment of it within a limited period, shorter than the d
of the bonds. It did not authorize us to take bonds to get a p
ment of the money.

Q. The act of Congress was broad enough in your opinion at
time, was it not, to permit you to take the notes of the compa
secured by a first lien?

A. Yes; to take the notes of the company secured by bonds as
lateral, but the notes to be paid within a period of ten years.

2093 Q. Yes. The act of Congress did not require that the securities which you should take should necessarily be payable within the ten years?

A. No. The act of Congress allowed us discretion as to taking security for the payment of the notes.

Q. Yes. That is, to put it another way, if the act of Congress had not been broad enough to permit you to take as security—as your only security—the refunding bonds running for a long time without the guarantee of the Southern Pacific Company, it would hardly have been broad enough to permit you to take such bonds with the guarantee?

A. Well, I suppose that is so; but that is arguing as to a condition that did not exist.

Q. Yes. I used that merely to meet your last suggestion as to the scope of the act.

A. Yes.

Q. Now, if it is not unseemly insistent, I am going to ask you, in view of your statement just made, if you will consider again, and bearing in mind, if you will kindly, that I want to draw a distinction between reasoning and recollection, if the fact is not that when you executed this agreement of February 1, 1899, you supposed that

2094 Speyer & Company were going to put through this reorganization in the way that seemed to them the most likely to make it acceptable to the company to be reorganized, and that you supposed that that contemplated, as then under consideration, an issue of bonds which would bear the guaranty of the Southern Pacific Company; but that if the bonds conformed to the requirements of the agreement of February 1, 1899, as written and executed, they would be acceptable to you, however much Speyer & Company or the Central Pacific Railroad Company might change its prospective plan of reorganization?

A. No; I am sure from what I recall of the transaction that the pledge of fifty-eight millions of those first refunding fours substantially issued as they were issued and as set out in the prospectus and guaranteed by the Southern Pacific was an essential part of the agreement, and by inference—almost necessary inference—it was contemplated by the agreement signed by the commissioners.

Q. Why did you make no reference in the agreement itself or in your commissioners' report of February 15, 1899, to the Southern Pacific Company or to any guaranty by it?

A. I can not tell you that.

Q. Is it not probable that if, when the matter was fresh in

2095 your mind, the guaranty had assumed the importance that it does at this length of time, you would have mentioned it either in your report of February 15th or in the agreement?

A. That might be argued, if I had no recollection about the participation of the Southern Pacific—it might very well be argued but I have positive recollection about that.

Q. You have observed that when you made your later report Attorney General and the bonds had been delivered and appeared to have the guaranty of the Southern Pacific, you then mentioned that fact in your report?

A. Let me see the report. [After examining report.] Yes; I did

Q. Does the fact that you did not mention it in the report concerning the agreement and the fact that you did mention it in the report which described the securities which you had actually received, lead you at all to any less certainty as to whether or not your recollection is correct?

A. No.

Q. Did Mr. Root pass at all upon the form or the language of the agreement of February 1st?

A. I do not recall that he had anything to do with it, yet I would not say that he did not.

2096 Q. Did any lawyer representing the United States, other than yourself, pass upon it?

A. Not that I remember.

Q. When, first after 1899, did you have occasion, if at all, before this morning to go over the details of these matters that we have been discussing here?

A. The first that I recall was in January, 1913, when I received a letter from Attorney General Wickersham asking me what my recollection was, or something to that effect, about the matter. I only went over some of it and I answered his letter, and I have here a copy of my answer if you want it.

Q. May I see it?

A. Certainly [handing letter to Mr. McClennen]. The original is undoubtedly in the Department of Justice.

Q. It would be your recollection that the legality of the transaction, so far as it might be affected by the Sherman Antitrust Act, was never considered or discussed with the commission or with the representatives of the Southern Pacific Railroad?

A. Unquestionably that is true. It never was.

Mr. McClennen. That is all.

2097 Redirect examination by Mr. Herrin:

Q. I will detain you but a moment to ask you if President McKinley did not take an active part in this matter, so that he was quite in touch with the progress being made in the settlement of the agreement?

A. He did take an active part in this, so that he kept in touch with the progress of the negotiation.

Q. He probably was about as well advised as any of the commis-
on as to how the matter stood in negotiation?
A. I think he was. I have already stated he regarded it as a very
portant subject and had expressed great interest.
Q. You will notice that in your special report made the 15th of
ebruary you stated on that day as follows:
"The said agreement was submitted in writing to the President
d approved by him on the 15th day of February, and the said
romissory notes have been duly delivered to the Treasurer of the
nited States."
That fixes the date when the President signed the agreement or
approved it. Is it not likely that the signatures of the com-
098 missioners were affixed to the agreement about that date, or
not very long prior thereto?
A. Oh, that is not improbable; but I really can not say.
Q. You have no recollection on that subject?
A. No recollection. As lawyers, we all know how those things run
er the date of the instrument.
Q. As an act of Congress it had no validity until the approval of
e President?
A. No.
Mr. HERRIN. That is all.
(Whereupon, at 12.45 o'clock p. m., a recess was taken until 2
clock p. m.)

099 AFTER RECESS.

LYMAN J. GAGE was called as a witness on behalf of the defendants,
nd having been duly sworn testified as follows:

Direct examination by Mr. HERRIN:

Q. Mr. Gage, you were Secretary of the United States Treasury
uring what time?
A. From March, 1897, to February 1, 1902.
Q. Before that time what had been your business?
A. I had been in the banking business all my life previously.
Q. About how many years?
A. About forty years.
Q. At what point or places?
A. At Chicago for about thirty years. I started in an interior
own in New York State.
Q. You were in responsible positions in banks, president and——
A. I went up through the ranks. I was president of the
100 First National Bank after being its practical manager for a
number of years. I was president for four or five years.

Q. That was the First National Bank of Chicago?

A. The First National Bank of Chicago.

Q. That is one of the leading banks there?

A. Yes; it was the largest bank there for many years.

Q. You were a member of the commission appointed by Congress to settle the indebtedness of the Central Pacific Railroad Company to the United States Government?

A. Yes, sir.

Q. Did you have anything to do with the negotiations that led to the agreement made by that commission?

A. Very little to do with the negotiations; scarcely anything directly. I was, I think, familiar with what was going on, but I was not up against the parties.

Q. Did you at any time have a conference with President McKinley concerning the matter?

A. Yes; several times.

Q. Was he active in the matter?

A. Yes; I should say he was active. In fact, the first I knew of the negotiation was from his statement of a visit he had from a certain party in connection with it.

2101 Q. From whom?

A. Mr. Huntington.

Q. And did you at any time have any conference with the other members of the commission?

A. With the Attorney General quite frequently.

Q. You quite frequently had conferences with him?

A. When we came in contact with each other, which we did two or a week, the subject was frequently raised as to the progress made.

Q. About how long a period of time did those negotiations cover as you recall?

A. It is hard to remember. I think a number of months.

Q. Do you remember the signing of the agreement by the commissioners—the agreement of February 1, 1899?

A. I do not remember it as an act. I know I did.

Q. But you did sign it?

A. Yes.

Q. Under the act appointing the commission it was the duty of the commission to obtain such security as was expedient in their opinion to accomplish the payment of these deferred payments, was it?

A. Yes, sir.

2102 Q. Do you remember in a general way or particularly what security was to be given by the Central Pacific Railroad Company or its successor to secure the notes that were taken?

Mr. McCLENNEN. The petitioner objects to the question on the ground that the agreement of February 1, 1899, speaks for itself in that respect and that this would be calling upon the witness to state the contents of a written instrument.

The WITNESS. I remember what I understood to be the security, the result of conferences and remarks back and forth between the President and the Attorney General and myself.

By Mr. HERRIN:

Q. What security was that to be? The agreement itself did not provide fully about the security, or did it?

Mr. McCLENNEN. Petitioner objects to the question on the ground that it calls upon the witness to state the contents of a written instrument which is already in evidence and speaks for itself.

The WITNESS. The agreement to which you refer does not seem to be a full description of the securities that were taken.

1103 By Mr. HERRIN:

Q. What securities were actually taken in executing the agreement?

A. They were part of an issue of one hundred millions of dollars of bonds by the reorganized Central Pacific Railroad, running during certain time in the future—I forget the time—guaranteed by the Southern Pacific Company.

Q. Was the security actually given in accordance with the understanding as you had it in your mind?

Mr. McCLENNEN. The petitioner objects to the question on the ground that it calls upon the witness to draw a conclusion on a question of fact and upon a question of law; and further, that it is leading and that it is immaterial and incompetent.

The WITNESS. The securities, as delivered; that is to say, the bonds that served as collateral to the series of notes given in settlement of the claims of the Government, were in conformity to what I understood was to be the nature of the security.

By Mr. HERRIN:

Q. It was your duty, as Secretary of the Treasury, to 1104 receive and hold those notes and the collateral security?

A. That was my main duty and the main thought I had in mind.

Q. Would you have accepted the bonds without the guaranty of the Southern Pacific Railroad Company?

Mr. McCLENNEN. The petitioner objects to this question as immaterial and incompetent and irrelevant.

The WITNESS. I am unable to answer that yes or no, because that proposition never came before me.

By Mr. HERRIN:

Q. But you do say that the bonds, with the guaranty indorse were in accordance with your understanding?

Mr. MCCLENNEN. The petitioner objects to the question as leadi and as immaterial, incompetent, and irrelevant, and as calling up the witness to draw a conclusion as to a question of fact and as t question of law.

The WITNESS. Yes; that is correct.

Mr. HERRIN. Take the witness.

Mr. MCCLENNEN. No cross-examination.

(Witness excused.)

(Whereupon an adjournment was taken until to-morrow, Wedn day, April 21, 1915, at 10.30 o'clock a. m.)

2105 TWENTY-SIXTH DAY.

ROOM 2506, 165 BROADWAY,
New York City, Wednesday, April 21, 1915.

The hearing was resumed, pursuant to adjournment, at 10.30 o'cl a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., E ward F. McClennen, Esq., and Edward E. Gann, Esq., special assi ants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pac Company.

2106 LEWIS J. SPENCE was called as a witness on behalf of t defendants, and having been duly sworn, testified as follow

Direct examination by Mr. BLAIR:

Q. Mr. Spence, will you give your railroad biography?

A. My service began with the Southern Pacific Company Octo 7, 1885, as stenographer in the office of the general eastern age whose title was subsequently changed to assistant general tra manager with headquarters at New York.

I was consecutively his secretary, chief clerk, and eastern freig agent until March 1, 1902, when I was appointed general east freight agent, and in addition to the duties of that position, w appointed general freight agent of the Atlantic steamship lines the company on February 15, 1906.

After more than twenty-five years of continuous service with t Southern Pacific Company I was appointed assistant director traffic of the Southern Pacific and Union Pacific systems, effec January 1, 1911, with headquarters at Chicago, and became direc of traffic of both systems on January 1, 1912.

1107 Upon the dissolution of the so-called Union Pacific merger my service with the Union Pacific system was severed on January 31, 1913, since which date I have been director of traffic of the Southern Pacific Company with general supervision and control of the traffic affairs of the system.

Q. What was the nature of your duties as chief clerk and eastern freight agent and secretary to the assistant general traffic manager?

A. I handled and was familiar with all of the affairs of his office.

Q. What were they?

A. The solicitation of traffic, consultation with respect to traffic arrangements, and everything pertaining thereto.

Q. What kind of traffic?

A. Freight and passenger traffic.

Q. Passing between what points?

A. As general eastern agent, the jurisdiction of the office was confined to traffic between the Atlantic seaboard territory and the far West and the South and Southwest. As assistant general
1108 traffic manager, the jurisdiction of the office included all territory east of the Mississippi River.

Q. And that related to traffic passing from California to the Atlantic seaboard territory?

A. Yes.

Q. Transcontinental traffic generally?

A. Transcontinental traffic.

Q. And your jurisdiction and duties were equally extensive when you were the general freight agent?

A. Yes; general eastern freight agent and general freight agent of the steamship lines.

Q. And your jurisdiction and duties were still more extensive as traffic director of the two systems?

A. Yes; that covered the entire system.

Q. Are you generally familiar with the history of transcontinental traffic in this country?

A. I am.

Q. How did you acquire such information?

A. From books of reference, such as Poor's Manual, Official Railway Guides, annual reports of railroads, maps, profiles, reports of the Interstate Commerce Commission and of State commissions.

Q. That might be called the historical study?

1109 A. Yes; and from personal observation and experience during a continuous service of nearly thirty years with lines engaged in transcontinental traffic.

Q. Is such knowledge a necessary part of your stock in trade?

A. It is an essential qualification for my position.

Q. Have you prepared a large map on which are conspicuou shown the lines now embraced in the Southern Pacific system?

A. An official map of Rand, McNally & Company has been pr pared and is on the wall, which shows conspicuously all of the li embraced in the Southern Pacific system. Its scale is thirty-five mi to an inch.

Q. Now, will you please explain the meaning of the different c ors? What line is represented by the blue, what line is represe by the orange, and what is represented by the brown?

A. The brown covers the bond-aided Central Pacific lines. T orange covers the Central Pacific lines that were not bond aid The blue covers all of the remaining lines of the Southern Pa system, the solid blue being rail and the broken line being st ship.

2110 Q. Is that map a correct representation of the lines of t Southern Pacific system?

A. It is.

Mr. BLAIR. Defendants offer in evidence the map referred to by t witness.

(The map referred to was thereupon marked "Defendants' E hibit (Spence) No. 54, April 21, 1915".)

By Mr. BLAIR:

Q. Have you prepared, Mr. Spence, a small scale reproductio that map for convenient use?

A. I have. This is a Rand-McNally production. It reprodu on a small scale, the large wall map, the difference being only in t fact that it does not show as much detail as the large map.

Q. Has the map to which you now refer different colors, to sh the Central Pacific bond-aided lines, the Central Pacific lines ot than those bond-aided, and then the other lines of the Southern P cific system?

A. The lines are distinguished by the same colors as are shown the wall map.

Q. The only distinction, as I understand, by reason of t

2111 difference in scale, is that it can not show some of the v small cities and some of the very small branches or feeder

A. Yes.

Q. Is that a correct representation of the lines of the system?

A. It is.

Mr. BLAIR. Counsel for defendants put in evidence the small s reproduction of the large map just referred to by the witness.

(The small map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 55, April 21, 1915".)

The WITNESS. The scale of that map is 160 miles to an inch.

By Mr. BLAIR:

Q. Now, Mr. Spence, will you describe, in a general way, the Sunset-Gulf route, or the Sunset Route, as it is called in the petition, of the Southern Pacific system?

A. The Sunset Route extends from Portland, Oregon, southward to Roseville and Davis, and from Roseville, Sacramento, Davis, Oakland, and San Francisco to the southeastern boundary of the State of California, defined by the Colorado River; then through the
1112 southern part of Arizona, New Mexico, Texas, and Louisiana to the ports of Galveston and New Orleans; thence by steamship lines from those ports to New York.

Q. Do the lines standing in the name of the Central Pacific Railway Company form a part of this route?

A. They do.

Q. What part in this route is played by the Central Pacific lines from the Oregon-California line to Tehama?

A. That part of the line is 191.5 miles, and forms an essential part of the Sunset Route.

Q. Without that line, would the part of the Sunset Route north of the Oregon-California line have any connection with the other part of the system?

A. It would not.

Q. What part in the Sunset-Gulf route does the line of the Central Pacific from Tehama to Roseville, Brighton, Stockton, and Lathrop play?

A. That line forms the shortest line of the Sunset Route between Oregon and northern California and points south and east, and its use has the effect of putting such points as Roseville, Sacra-
1113 mento, and Stockton on the Sunset Route, where they otherwise would not be.

Q. Does it afford also an alternative route for through service?

A. It does.

Q. And what effect has that upon the service, at times?

A. It has the effect of increasing the efficiency of the service and avoiding congestion by the use of alternative routes.

Q. What part in the Sunset-Gulf route does the line of the Central Pacific from Lathrop to Goshen play?

A. That part of the line forms an alternative route from all points north of Lathrop, as well as from Oakland and San Francisco, to all points south and east.

Q. Is it extensively used as a part of the Sunset-Gulf route f
transcontinental traffic?

A. Very extensively.

Q. What effect has such use, and the possession of that line, up
the service to be afforded by the Sunset-Gulf route?

A. It affords an alternative route which facilitates transportati
and avoids congestion. For example, that route was u
2114 almost entirely during the period of the destruction of a t
nel on the coast line, a period of about four months, last ye

Q. Has that also the effect of putting certain towns upon
Sunset-Gulf route which would not otherwise enjoy that advanta

A. Yes.

Q. What towns?

A. Such towns as Merced, that being the most important point
that line.

Q. The most important part of that use of the line, of that pa
of the line, is as an alternative route, and it is extensively u
having the effect of preventing congestion and improving the servi

A. Yes.

Q. Will you describe the lines standing in the name of the Cen
Pacific, in a brief way, generally, so that we may have on the rec
just what lines are in the name of the Central Pacific?

A. The lines of the Central Pacific begin on the west at Oakl
Redwood, and San Jose, and extend eastward via Lathrop, Stockt
Brighton, and Sacramento to Umbria Junction, Utah, a
2115 from there one line runs via Promontory around the north e
of the Salt Lake and the Lucin cut-off, across the lake
Ogden; and runs from Roseville northward to the Oregon-Ca
fornia boundary, with a small branch from Weed, California,
Kirk, Oregon.

A line from Sacramento or Brighton southward—we will
from Lathrop southward—to Goshen Junction, California.

A branch line from Wadsworth, or Fernley, which is the point
which it really leaves the main line, into Susanville and Westwo
which are lumber camps.

A line from Hazen, Nevada, to Mojave, that part of which
tween Tonopah Junction and Owenyo, 134 miles, is narrow gauge.

There is a small branch to Mound House—from Churchill
Mound House—and a small branch from Hazen to Fallon.

There is a small branch line from Natron, Oregon, to Oakri
Oregon, a distance of about 34 miles.

Q. Of these lines which you have described, which of them
the bond-aided lines, the lines that were constructed by the aid

onds given by the United States Government under the terms of he Pacific Railroad act?

A. That part of the line from San Jose via Lathrop and Stockton o Brighton.

Q. Would you say via Niles as well?

116 A. Via Niles, Tracy, Lathrop, and Stockton to Brighton, and from Sacramento eastward to Umbria Junction, and round the north end of Great Salt Lake via Promontory to Ogden.

Q. What is the distance from Brighton to Sacramento?

A. Four miles.

Q. What is the distance on the Central Pacific line from Oakland o Ogden via Promontory?

A. 868 miles.

Q. What do you mean, or what do I mean, by "via Promontory"?

A. Via the line that runs around the north end of the Great Salt ake.

Q. Where is the Lucin cut-off?

A. The Lucin cut-off leaves the old line at Umbria Junction and xtends across Salt Lake to Ogden.

Q. What was the purpose of its construction?

A. To secure a more efficient line and improve the service.

Q. That, of course, is not bond aided?

A. That is not bond aided.

Q. What is the distance from Oakland to Ogden via the Lucin cut-off?

117 A. Entirely by the Central Pacific, 825 miles.

Q. What is the distance from Oakland via Benicia to Sacramento, which is the Southern Pacific line, I believe—is that so?

A. Yes.

Q. (Continuing.) And the Central Pacific line thence to Ogden ia the Lucin cut-off?

A. 779 miles.

Q. Is the old line of the Central Pacific, all the way from Oakland o Ogden via Pomontory, in use?

A. It is not in use for any through service.

Q. Why not?

A. It runs up to a summit of between 600 and 700 feet and it has maximum grade of 1.7 per cent. It is 44 miles longer than the ucin cut-off.

Q. What point of the Sunset Route is the same distance from Oakand as Ogden is?

A. Piedra.

Q. What is the distance between Ogden and that point?

A. 540 miles by an air line.

Q. What is the distance from Ogden to New York by line?

2118 A. About 2,000 miles.

Q. And by the shortest railroad connection?

A. By the Union Pacific, Chicago & North Western, and P sylvania lines, which is the short line, it is about 2,397 miles.

Q. What is the distance from Ogden to New Orleans by air

A. 1,395 miles.

Q. And by the shortest railroad line?

A. It is 1,870 miles by the shortest line, which is the Denver Grande, Colorado & Southern, Fort Worth & Denver City, Texas & Pacific.

Q. What part of the Atlantic seaboard territory is directly re by the Sunset Route or the Sunset-Gulf Route?

A. New York Harbor only.

Q. Any other portion of Atlantic seaboard territory re service via connecting lines?

A. Requires service via connecting lines.

Q. Can you give us a general statement of what roads were for transcontinental traffic in 1885? We have had it b

2119 but I want it brought out consecutively in the order testimony.

A. Sailing vessels between New York and San Francisco via Horn, which had been in operation many years.

The Panama route between New York and San Francisco vi Isthmus of Panama, which had been in operation since 1855.

The Union Pacific-Central Pacific route via Ogden, which been in operation since 1869.

The Santa Fe-Southern Pacific route via Deming, which opened in 1881.

The Texas & Pacific-Southern Pacific route via Sierra Blanc El Paso, which was opened in 1882.

The Sunset-Gulf route between New York and California, had been opened February 1, 1883.

The Denver & Rio Grande-Rio Grande Western-Southern P route via Ogden, which was opened in May, 1883.

The Northern Pacific, which formed a junction with the O Railroad & Navigation Company at Wallula, Washington, in tember, 1883; thereby making a through transcontinental li Portland which, in connection with the steamship line of the O Railroad & Navigation Company, reached San Francisco

2120 The Santa Fe route via Needles and Mojave, which completed in October, 1883.

The Union Pacific-Oregon Short Line-Oregon Railroad & N tion Company, which was completed to Portland in 1884, a

onnection with the Oregon Railroad & Navigation Company's teamship line, afforded a through route to San Francisco.

Q. Were all these lines capable of carrying transcontinental traffic rom California to the Atlantic seaboard territory?

A. Yes, sir.

Q. What were the railroads east of the Missouri River which the bove-mentioned rail routes formed connection with, first to Chicago nd to the Mississippi River, and from the Mississippi River to the tlantic coast, in 1885? If you have a list of them you may read rom the list rather than trust to your memory, unless you can give em from memory.

A. The Chicago & North Western between St. Paul and Chicago, nd Council Bluffs and Chicago.

The Chicago, Milwaukee & St. Paul between St. Paul and Chicago, and Council Bluffs and Chicago.

21 The Chicago, Rock Island & Pacific between Council Bluffs and Chicago.

The Chicago, Burlington & Quincy between Council Bluffs and hicago, and between Kansas City and Chicago, and St. Louis.

The Wabash between Council Bluffs and Kansas City on the west, nd St. Louis and Chicago on the east.

The Chicago & Alton between Kansas City and Chicago and St. ouis.

The Missouri Pacific between Kansas City and St. Louis.

What is now the Frisco lines, which ran east to Memphis; the Cotn Belt Route extended east to Cairo.

Q. Now, state the lines east of Chicago and the Mississippi River.

A. Between Chicago and Buffalo——

Q. Well, just mention a few of them, and state whether they are w or numerous.

A. The Grand Trunk Railway; the Michigan Central Railway; e Nickel Plate line; the Lake Shore & Michigan Southern; the g Four Route; the New York Central; the West Shore; the Delare, Lackawanna & Western; the Pennsylvania lines; the Erie; the Baltimore & Ohio.

22 Over into New England, the Boston & Albany; the New York, New Haven & Hartford.

Farther south, the Norfolk & Western.

Q. That will be sufficient. Then there were others?

A. And others.

Q. Will you state, in a general way, the additions to or improvents in the through routes capable of carrying this traffic, which ok place between 1885 and 1901?

A. The Santa Fe reached San Diego in 1885 and Los Angeles rtly thereafter.

The Santa Fe reached Galveston in 1886 and formed connec
with the Mallory Steamship Line between Galveston and New
The Santa Fe line between Kansas City and Chicago was op
in 1888.

The Santa Fe's through line to San Francisco, by acquisitio
the San Francisco & San Joaquin Valley Railway, was opene
July, 1899.

The Canadian Pacific line to Vancouver was completed in
and formed a connection with the Pacific Coast Steamship Com
operating between Vancouver and San Francisco.

The Soo Line was completed to Portal, North Dakot
2123 1894.

Q. From what place?

A. From St. Paul, and formed a connection at Portal with
Canadian Pacific.

Q. The Soo Line formed, at St. Paul, a connection with
line?

A. The Chicago & North Western and the Chicago, Milwauk
St. Paul, at first, and subsequently with the Wisconsin Central, w
the Canadian Pacific acquired.

Q. Now, the Northern Pacific?

A. The Northern Pacific completed its own line to Tacom
1887 and to Seattle in 1899 and formed connection with the P
Coast Steamship Company between Puget Sound ports and
Francisco.

Q. Did it not have a line at that time to Portland?

A. Yes; it had its own line to Portland.

Q. And that line from Portland connected with the——

A. It connected with the Oregon Railroad & Navigation C
pany's steamship line between Portland and San Francisco.

The Missouri Pacific completed its line west of the Missouri R
to Pueblo, Colorado, in 1887, and in 1888 the Colorado
2124 land completed to a connection with the Denver &
Grande and Rio Grande Western, which connected with
Southern Pacific at Ogden.

Q. At Pueblo the Missouri Pacific connected with what comp
coming west?

A. At first with the Santa Fe, and in 1888 what is now the R
Island was completed.

Q. Did it not also connect with the Denver & Rio Grande
Pueblo?

A. Westward?

Q. Westward.

A. Yes. I misunderstood your question. It connected with
Denver & Rio Grande westward, and it connected with the S

eastward, and with the Chicago, Kansas & Nebraska Railway, which is now the Rock Island, at Colorado Springs in 1888.

The Great Northern completed its own line to Seattle in 1890 and formed connection with the Pacific Coast Steamship Company between Seattle and San Francisco.

The Chicago, Burlington & Quincy completed its line to a point near Billings, Montana, in 1894, connecting with the Northern Pacific, thence to Seattle, Tacoma, and Portland; and the Pacific
2125 Coast Steamship Company between those ports and San Francisco.

Q. How about the Great Northern?

A. The Great Northern was completed to Seattle in 1890, forming connection with the Pacific Coast Steamship Company between Seattle and San Francisco.

Q. Were all those lines you have mentioned in actual operation, say, on December 31, 1900?

A. They were.

Q. Engaged in transcontinental traffic from coast to coast?

A. They were.

Q. And capable of carrying traffic from California to the Atlantic seaboard territory?

A. Yes.

Q. Would that be true if you put the date back a year or two, say to 1899 or 1898?

A. Every one of the railroad lines enumerated was engaged in the transcontinental business in 1898. The American-Hawaiian Steamship Line did not begin to operate through the Straits of Magellan until October 15, 1900.

Q. Have you a list of their connections east of the Mississippi River and east of Chicago?

2126 A. I have prepared such a list.

Q. How many are on the list of railroads?

A. There are sixteen railroads between the Missouri River and Chicago and the Mississippi River.

Mr. McCLENNEN. This is of what date?

The WITNESS. December 31, 1900.

By Mr. BLAIR:

Q. Are they practically the same railroads that you mentioned as forming the eastern connections of these lines in 1885?

A. With a few additions. I did not mention the eastern lines, the lines between Chicago, the Mississippi River, and the East, which number twenty-six. They are shown on the same list.

Q. Have you prepared a map showing graphically the competitive routes which you have mentioned as in existence December 31, 1900?

A. I have.

Q. Will you please produce it?

A. Here it is.

Q. As I understand, this map correctly shows the compe-

2127 tive routes which you have orally described as in existe-
December 31, 1900?

A. It does.

Q. I notice two colors are used, green and red. What does the r
represent?

A. The red line represents the lines embraced in the Southern P
cific system.

Q. And the green lines represent all the others?

A. All other lines.

Q. I understand also from your statement that this map wo
correctly represent existing conditions if you shoved back the d
two years, with the exception of the American-Hawaiian Line wh
is shown on the map?

A. Every railroad on that map was engaged in transcontinen
business two years previously.

The American-Hawaiian Line, which is shown here as operati
via the Straits of Magellan, did not inaugurate its service u
October 15, 1900.

Mr. BLAIR. Counsel for defendants put in evidence the map r
ferred to and described by the witness.

(The map referred to was thereupon marked "Defendants' Exhi
No. 56 (Spence), April 21, 1915.")

2128 By Mr. BLAIR:

Q. I see you have here, as from Galveston, the Mall
Steamship Company.

A. Yes.

Q. With what line was it affiliated in business?

A. With the Santa Fe, between California and Galveston.

Q. And formed a mixed rail and water line through from poi
on the Pacific coast reached by the Santa Fe——

A. And New York.

Mr. ORR. Is this map the same scale as the other small map?

The WITNESS. It is the same map, with these things graphica
shown.

By Mr. BLAIR:

Q. Now, Mr. Spence, will you go over and describe the additio
transcontinental routes which have arisen since December 31, 19
and are capable of carrying traffic from coast to coast and from Ca
fornia to the Middle West and to the Atlantic seaboard territory?

A. The Rock Island line from Chicago through Kansas City was completed to Santa Rosa, New Mexico, in 1902, and connected with the El Paso & Southwestern between Santa Rosa and El Paso.

2129 Q. The El Paso & Southwestern is a part of the Rock Island system?

A. It is an affiliated line, yes, connecting at El Paso with the Southern Pacific.

The Rock Island also completed a line from Memphis to Tucumcari, New Mexico, in 1910, forming connection at that junction with the El Paso & Southwestern to El Paso and thence Southern Pacific.

Q. Have you close connections and business arrangements with the Rock Island via El Paso?

A. We have very cordial relations, through rates, and prorating arrangements.

Q. What is the nature and extent of the transcontinental business done by the Rock Island?

A. It is a very substantial business, a large business; a very large business being done by that route, especially to southern California.

Q. Does it do a considerable business from California north of the Tehachapi, both east and west?

A. Yes.

2130 Q. Would it range, say, next to the Santa Fe, among the all-rail lines? I mean next to the Santa Fe, ranking the Santa Fe, in my mind, as next to the Ogden route.

A. Yes.

Q. Now, go on with your description.

A. The San Pedro, Los Angeles & Salt Lake Railroad was completed between Salt Lake City and Los Angeles in 1905.

Q. Does it do a large business?

A. It does.

Q. From what part of California?

A. Especially southern California. The Santa Fe completed its Belen cut-off in 1908, and it not only shortened its own line, but thereby formed connection at Vaughn, New Mexico, with the Rock Island through the El Paso & Southwestern.

Q. What reduction in mileage from California to Galveston was effected in that way?

A. That line did not reduce the mileage. The Coleman cut-off, which was completed later, reduced the Galveston mileage. That line also formed a connection with the St. Louis & San Francisco at Waynoka, Oklahoma, giving them a through transcontinental route.

2131 The Santa Fe's Coleman cut-off was completed in 1914. That shortened the Santa Fe line 367 miles and made the Santa Fe-Mallory Line the shorter of the two Gulf routes between New York and California.

Q. By the other Gulf route you mean the Sunset-Gulf route?

A. The Sunset-Gulf route. The Chicago, Milwaukee & St. P completed its line from Chicago to Seattle in 1909.

The Spokane, Portland & Seattle Railway, jointly owned by t Northern Pacific and the Great Northern, was completed betwe Spokane and Portland in 1908, and formed connection original with the Oregon Railroad & Navigation Company's steamships, a now forms connection at Astoria with the steamship line, under t joint ownership of the Northern Pacific and Great Northern, betwe Astoria and San Francisco.

Q. And those steamship lines are in operation in connection wi the rail lines?

A. They are.

Q. When did the Kansas City, Mexico & Orient Railroad come i

A. The Kansas City, Mexico & Orient Railway from Wichit Kansas, was completed to a connection with the Texas & Pacific Sweet Water, Texas, in 1908, and to a connection with the Ga veston, Harrisburg & San Antonio at Alpine, Texas, in 190

2132 Q. Is that in the transcontinental business, actively, fro California?

A. It is; and I should add that north of Wichita it has entran into Chicago by the Rock Island and the Santa Fe, and into S Louis by the Missouri Pacific and the St. Louis & San Francis Railway.

The Western Pacific Railway was first opened for freight busine between Salt Lake City and San Francisco about the close of 190 It was finally opened for passenger business in August, 1910.

Q. And it forms a through route?

A. It forms a through route, connecting with the Denver & Ri Grande at Salt Lake City and the Missouri Pacific system to th Mississippi River and all lines east.

Q. The Missouri Pacific Railway and the Denver & Rio Grand and the Western Pacific are known as what system of lines?

A. The Gould system of lines.

Q. Closely affiliated?

A. Yes; by stocks and bonds.

Q. I suppose it is true that the new roads which you hav

2133 mentioned have practically the same connections at the Mi souri River and at Chicago as you enumerated as existing o December 31, 1900?

A. All of the connections enumerated as in operation December 3 1900, are still in existence as connecting lines and as competitors fo transcontinental business.

I should like to add that the electric lines were opened in Calif nia, the Central California Traction Company between Stockton a

Sacramento, the Northern Electric between Sacramento and Marysville and Chico, and the Oakland, Antioch & Eastern between Sacramento and Oakland; and the American-Hawaiian Steamship Line, on January 1, 1907, inaugurated through service between New York and California points via the Tehuantepec Route; that is, the Isthmus of Tehuantepec in connection with the Tehuantepec Railroad.

Mr. McCLENNEN. I do not think that made quite clear when those electric lines were opened.

Mr. BLAIR. I am going to ask about that.

By Mr. BLAIR:

Q. What was the effect of the opening of those electric lines?

A. The electric lines have been made parties to joint through
2134 rates and divisions with the transcontinental lines. They supplemented the Santa Fe and the Western Pacific as connections reaching a number of points.

Q. They reach a number of points which, before their construction, were exclusively on the Southern Pacific lines?

A. Yes. The Santa Fe extended as far north as Stockton, and by use of the electric lines north thereof, they were given an independent entrance into Sacramento and Marysville and all points north of Stockton.

Q. Mr. Spence, what has been the policy of the Southern Pacific Company in respect of each transcontinental line which has made a junction with it from time to time?

A. The Southern Pacific has consistently opened each gateway as it has been reached by a transcontinental connection, and joined in the establishment of through rates and divisions.

Q. And have the through rates and divisions which it established been effective to enable the new transcontinental lines thus formed to engage actively in transcontinental business?

A. They have permitted them to engage in all business to and from points reached by the Southern Pacific.

2135 Q. Was this policy adopted and enforced prior to the time when, by amendment to the interstate commerce act, the Interstate Commerce Commission acquired authority to enforce the making of joint rates and fair divisions?

A. The policy was consistently pursued many years prior to the Interstate Commerce Commission having been empowered to establish through routes and joint rates.

Q. At what time was the Panama Canal opened for business?

A. August 15, 1914.

Q. What lines of steamships have been opened through the Panama Canal since that date?

A. The American-Hawaiian Steamship Line.

The Luckenbach Steamship Line.
The Grace Line, operated by W. R. Grace & Company.
The Emery Steamship Company.
A line operated by Swayne & Hoyt.
And a line operated by Sudden & Christiensen.

Q. Those lines are engaged in and compete for what kind of tra continental business generally?

A. They engage in and compete for all transcontinental busin which is of a character that can be handled by any steamsh line.

2136 Q. Yes; but I mean territorially.

A. They actively compete for, and successfully compete f business between all points in Atlantic seaboard territory and points in California.

Q. Have you prepared a map which shows graphically the co petitive routes in existence, say, at the time the map was prepare What date does it bear?

A. October 1, 1914.

Q. And shows the competitive routes for transcontinental tra generally and for transcontinental traffic between California and t Atlantic seaboard territory in particular?

A. It does.

Q. Will you produce it for exhibition to counsel?

A. Here it is.

Q. What do the lines colored red represent?

A. The lines colored red are the lines embraced in the Southe Pacific system.

Q. I see a few lines around about Stockton and Sacramento c ored yellow.

A. Those are the electric lines between Stockton and Sacramen between Sacramento, Marysville, and Chico, and b

2137 tween Sacramento and Oakland.

Q. It appears from this map that there are two steamsh lines in operation from Seattle to San Francisco?

A. Yes.

Q. Are they in actual operation?

A. Yes; Pacific Coast Steamship Company, which I have pr viously described, and the Alaska Pacific Steamship Company.

Q. And two steamship lines from Portland to San Francisco?

A. Yes.

Q. Are they in active operation?

A. Yes; the San Francisco & Portland Steamship Company a the North Pacific Steamship Company.

Q. Are they in operation with these other rail lines engaged i transcontinental traffic?

A. They are.

Q. Between San Francisco and Los Angeles there are how many steamship lines?

A. Nine, I think.

Q. How many steamship lines are engaged in this competitive striving for transcontinental traffic through the Panama Canal?

2138 A. There are six steamship lines between Atlantic ports and California ports.

Q. As of the date of this map, how many steamers were in that trade as part of the American-Hawaiian Line?

A. Twenty-six.

Q. Large steamers?

A. Of an average capacity of about 10,000 tons.

Q. How does that compare with the service they had previously over the Tehuantepec route?

A. They built a number of new ships in anticipation of the opening of the canal, and the service via the Tehuantepec route consumed a time of about twenty-six to thirty days, the route involved a transfer from ship to car on the Atlantic side of the isthmus and from car to ship on the Pacific side, while the service through the Panama Canal involves no transfer between the Atlantic and Pacific ports and the average time is about twenty-two days between New York and San Francisco. They advertise about eighteen days to Los Angeles.

Q. How many boats or steamers has the Luckenbach Steamship Company?

A. Eight.

2139 Q. What kind of steamers are they?

A. They have an average capacity of five or six thousand tons.

Q. Are they successfully engaged in this strife for transcontinental traffic, especially to the Atlantic seaboard territory?

A. They are taking a great deal more than I would like to have them do.

Q. From northern and central California?

A. Yes.

Q. By northern and central California you mean all of California north of what point?

A. North of the Tehachapi Mountains. We usually define it by Mojave and Santa Barbara.

Q. And these other steamship lines which you have mentioned have their boats actively engaged in this traffic and striving for the business?

A. Yes. The aggregate number of steamers in operation by the lines shown on the map, on the date of the map, numbered forty-nine.

Mr. BLAIR. Counsel for the defendants put in evidence
2140 map just referred to by the witness, being headed "Map
Competitive Routes, October 1, 1914."

(The map referred to was thereupon marked "Defendants' Exhi
(Spence) No. 57, April 21, 1915.")

By Mr. BLAIR:

Q. What is the extent or degree of competition now existing
traffic between the Pacific and the Atlantic coasts?

A. It is very active and acute.

Q. What is the extent and degree of competition now existing
to traffic between northern and central California and the Atla
seaboard territory?

A. It is even more acute and intense.

Q. Is that true both as to the number of competitors and
fierceness of the competition?

A. Yes.

Q. What degree of success, Mr. Spence, had the Sunset-G
route attained, say about 1890, in the securing of transcontine
traffic, especially from coast to coast?

A. In 1890 the Sunset-Gulf route had secured the major part,
larger percentage of the westbound traffic between the Atlantic
board and California, of a character in which it could engr
2141 Q. What factors, in your opinion, account for this suc
of the Sunset-Gulf route in securing a major portion of
traffic from California to the Atlantic seaboard territory?

A. The Sunset-Gulf route operated through an undeveloped
ritory. There was a very small volume of local traffic to interf
with the despatch of the through traffic between New Orleans
California, and no local traffic to interfere with its transportat
between New Orleans and New York. The line was operated un
one management, which enabled it to afford service infinitely supe
to any that had previously been given on transcontinental traffic.

Q. What do you include by "service"?

A. The time in transit, the method of keeping consignees infor
of the whereabouts of freight, and the date upon which its arri
might be regularly expected; and the adjustment of claims——

Q. That is sufficient for illustration. Why was there not, ab
that time and prior thereto, as good service and as prompt handl
of claims over the all-rail routes?

A. The eastern lines at that time were busily engaged in
development of their own traffic within their own
2142 ritory. They manifested comparatively little interest in
transcontinental traffic, and it had never been possible to br
about that coordination of effort between the several lines form

the through routes all-rail that was necessary to meet the service and facilities established by the Sunset-Gulf route.

Q. What was the effect of this indifference of the all-rail lines, or a part of them, upon the time taken to affect the movement of freight from San Francisco to Atlantic seaboard territory?

A. The time of the all-rail lines in those days was at least a week or ten days, if not more, longer than the time of the Sunset-Gulf route.

Q. How long was this ascendency of the Sunset-Gulf route over the all-rail lines maintained? I do not mean the exact number of months or years, but about what time?

A. It would be difficult to fix an exact time. The change was a gradual process. The all-rail lines gradually improved their service and coordinated their efforts. The number of them engaged in the transcontinental business had been gradually increasing; the army of soliciting forces correspondingly increased, and they had
2143 caught up with the Sunset Route in modern methods of handling and adjusting claims by a better coordination between them than had previously existed.

Q. And about what year would you give as the date when they caught up with the proportion of traffic handled by the Sunset-Gulf route?

A. The Sunset-Gulf route handled the major part of the traffic until about 1895, and by 1897 the all-rail lines were securing the preponderance of the business.

Q. What was the Sunset-Gulf route doing all that time?

A. The Sunset-Gulf route was struggling to maintain its prestige by an improvement of its service, construction of additional steamers, and everything that it could do to keep up with the procession.

Q. Would it be true to say, in your opinion, that the Sunset-Gulf route applied a continuous competitive spur to the all-rail lines?

A. There is no doubt about the service and methods of the Sunset-Gulf route having stimulated the all-rail lines to an improvement in their service.

Q. And that competition in service and effort to get the business still continues, does it?

2144 A. Very actively.

Q. It has been said here in some part of the Government's testimony that the Santa Fe was not a factor in the transcontinental business, and especially from and to central California, prior to its entrance into San Francisco on its own lines in 1899. What have you to say as to that?

A. The Santa Fe was a factor in two ways—it had its own line into southern California——

Q. From about what date?

A. 1885. The transcontinental rates to southern California w inseparably associated with the transcontinental rates to cen California or to San Francisco.

Q. Just explain what you mean by that.

A. The best way to explain it would be to say that we could have lived with the people in San Francisco if we had underta to maintain a higher rate than the Santa Fe made to Los Angele

Q. That is one way. What is the other way which you had mind?

A. In 1884 the Santa Fe had worked under arrangements w the Southern Pacific whereby it had through rates and d
2145 sions on a pro rate via Mojave and whereby it had acces every point reached by the Southern Pacific system in C fornia and was in a position to actively compete at all points, m tained its own soliciting organizations, and it had the privileg issuing its own through tickets, its own through bills of lading, making its own through way bills.

Q. Were there joint rates and divisions?

A. There were joint rates and divisions.

Q. Do you know anything about the transcontinental ton taken by the Santa Fe in those early days from central Californi

Mr. McCLENNEN. This is between 1884 and 1899 that you speaking of?

Mr. BLAIR. Yes.

The WITNESS. Petitioner's Exhibit No. 22 shows that.

By Mr. BLAIR:

Q. What is petitioner's Exhibit No. 22?

A. It is taken from the reports of the committee to Con under the Pacific Railway acts.

Q. If you do not mind, I will ask you about that after I looked at petitioner's Exhibit No. 22. I have not got it here. will pass that for the moment.

Do you know, of your own knowledge, as to whether
2146 Santa Fe was an active competitor for business north of jave prior to 1899?

A. I do. I know of their competition every day—very a competition.

Q. And successful competition?

A. And successful competition.

Q. Has the San Pedro been an active and successful compe with the Southern Pacific lines?

A. It has.

Q. And the Western Pacific?

A. The Western Pacific has been an active competitor.

Q. You have mentioned the electric lines between Sacramento and Oakland.

A. The electric lines.

Q. And what effect did the transfer of the American-Hawaiian service from the Straits of Magellan to the Tehuantepec route, in 1907, have?

A. The effect was to very substantially increase the competition of the steamship lines.

Q. And lessen the takings——

A. And to reduce the takings of the transcontinental carriers.

147 Q. Including the Sunset Route?

A. Including the Sunset Route.

Q. Was it a large sufferer?

A. The Sunset Route was the chief sufferer, because the steamship lines were in a position to compete for the peculiar class of traffic, all of the traffic that the Sunset Route was in a position to physically handle.

Q. And that competition of the water carriers, as I understand, has been considerably increased since the opening of the Panama Canal?

A. Yes. In addition to the lines shown on the map that has been introduced, the Red Star Line have established a regular service, the steamers Finland and Kroonland, between New York and California.

Q. What time will they now make?

A. They take sixteen days between New York and San Francisco.

Q. It may be a melancholy question to ask you, Mr. Spence, but what has become of the ascendancy of the Sunset-Gulf route that has been suggested here?

A. It has entirely disappeared.

148 Q. What is its influence now as compared with its influence in 1910?

A. Its influence has been very substantially lessened by the opening of the Panama Canal.

Q. And what was its influence in 1910 as compared with its influence in 1900 in transcontinental business?

A. Its influence in 1910 had been very materially reduced by the opening of the Tehuantepec route and by the insistent improvement of the service of the other lines.

Q. What was its influence in 1900 as compared with its influence in 1885?

A. In 1900 it had begun to decline—it had declined. It having i previous years taken the major part of the Atlantic seaboard traf by 1900 it was taking the minor part.

Q. Is that progress in the wrong direction of the Sunset-Gulf rou not only with reference to its influence, but with reference to i takings of transcontinental traffic?

A. Its takings of transcontinental traffic have decreased in pr portion to the decrease of its influence.

Q. Are there any general rules or principles in force on the Sout ern Pacific system as to the preferential solicitation or preferenti routing of traffic?

2149 A. Yes.

Q. Are those in writing?

A. No.

Q. How are they made known to your agents?

A. Our traffic forces and field forces are periodically assembl and informed of the general solicitation policy of the company.

Q. What is the reason for making these generally known to yo agents?

A. To coordinate the efforts of the organization. A car of freig may be ordered by a man in San Francisco from a man in Chic for shipment by a man in New York. It is essential to have c ordinated effort between our representatives in San Francisco, Ch cago, and in New York to secure that shipment.

Q. To prevent your agents contemporaneously pulling in di ferent directions?

A. Pulling in different directions.

Q. State what is the policy of the Southern Pacific Compa with reference to preferential solicitation of traffic and the reas therefor.

2150 A. The general policy is to solicit traffic by the long ha or by the best revenue haul, in so far as that practice enab the Southern Pacific to offer service and facilities that will satis its patrons, and not only secure but retain their confidence and th business. It would not be business like or profitable to press t solicitation of business for the long haul in order to secure sporad shipments, if the effect of your inability to give satisfactory serv would be, as it of course would be, to divert the future business that shipper to a competitive line, whereby no haul would be deriv

Q. When the service by your shorter haul would be superior better meet the requirements of the shipper, would it be consist with your policy to seek to route that traffic by the longer haul?

A. No.

Q. And your agents, in obedience to that policy, would not seek o so route it?

A. They would not. The service must be such as to satisfy the hipper and retain his business.

Q. Now, let us apply this policy to the movements to and from Middle West territory, say, and points north of Mojave and
151 Santa Barbara. First, what do you mean by "Middle West territory"?

A. Middle West territory, as we define it here, embraces all points est of the Atlantic seaboard territory, a line drawn from Buffalo hrough Pittsburgh and Wheeling to Bristol, Tennessee; all points orth of the Ohio River and the northern boundaries of Arkansas nd Oklahoma, and on east of the line of the Rock Island Railway xtending northeastwardly to St. Paul.

Q. In explanation of my taking points north of Mojave and Santa arbara, I will ask you: Does the Central Pacific line figure in traffic outh of those points, or in what we have been calling southern alifornia?

A. With the exception of some shipments of citrus fruits from outhern California, which are sent north by the shippers via Sacraento and Ogden for climatic or commercial reasons, the Central acific is not a factor in southern California business.

Q. Why not?

A. It is 400 miles longer than the short line from Chicago.

Q. Would it figure in such traffic if it was separated from the Southern Pacific?

152 A. It would not.

Q. Its inability to figure in traffic from southern California not due in any way, then, to its connection with the Southern acific?

A. No.

Q. The lines which do figure in traffic to and from southern Calirnia, say, and the Middle West territory, are what?

A. The San Pedro, Los Angeles & Salt Lake Railway, in connecon with the Union Pacific and the Denver & Rio Grande; the anta Fe system; the Southern Pacific line via El Paso in connection ith the Rock Island, and Texas & Pacific.

Q. Now, coming back; apply the policy of preferential solicitation routing to traffic between northern and central California and e Middle West territory, and what will be the result?

A. The result is to have a coordinated solicitation of the Southern acific organization of all traffic between Middle West territory, as escribed, and northern and central California, via the Ogden route.

Q. Please state, briefly, the reasons why you solicit that way stead of by your El Paso route.

2153 A. That policy is adopted to enable us to afford the shippe and consignees a service that will fully meet the service direct competitors and secure and retain their traffic.

Q. Does that mean that the Southern Pacific closes these oth routes via El Paso?

A. The Southern Pacific does not close any gateway or rou Its route via El Paso is open, and its connections east of El Pa actively solicit this traffic via the El Paso route.

Q. Will you mention your principal connection via El Paso?

A. The Rock Island.

Q. What is the character and extent of the business which t Rock Island succeeds in moving from northern and central Calif nia to Middle West territory, and the reverse?

A. The Rock Island secures a substantial business between Mid West territory and northern and central California.

Q. And what are your relations with the Rock Island p ple?

2154 A. They are very cordial. We afford them all the facili that could be afforded them to secure and handle this tra satisfactorily.

Q. What difference is there in the solicitation of Middle W territory traffic, if any, from that which existed prior to 1901, the reasons therefor?

A. Prior to 1901, from a small section of what we have descri here as Middle West territory—that is to say, from the section of of a line drawn from Toledo through Indianapolis and Terra Ha to East St. Louis—effort was made to secure business via New leans on the southern route, that territory embracing points t could be routed via Ohio River crossings.

Q. Was that successful to any extent; and if so, what were reasons for the success?

A. It was reasonably successful in that territory, first, bec the service of the direct lines, especially in the earlier nineties, not as efficient as it is to-day; the lines between Cincinnati and Orleans and between Louisville and New Orleans were very hun for traffic and made a specialty of service between Cincinnati New Orleans which connected with the fast service of the South Pacific from New Orleans to California, which was nat

2155 Gulf traffic, and there was not the same stability of rates exists to-day.

Q. Stability of rates is a rather elastic term. May I interpr as including not as strict an observance of tariff rates as now ex

A. I would subscribe to that.

Q. And that was one of the factors in securing business by this roundabout route?

A. Yes.

Q. Or, rather, by a longer route?

A. Yes.

Q. I want to call your attention to an exhibit, petitioner's Exhibit No. 68, which I now show you, in which Mr. Connor gives a list or statement of the carload shipments from Middle West territory. Have you looked over that statement sufficiently to state the number of cars shown by that statement for any one year?

A. (After examining Exhibit No. 68.) The largest year was 5,073 cars, and the average of the years shown was 3,572 cars.

Q. What is an average carload in tons?

A. The average carload of manufactured products on our lines is about eighteen tons.

2156 Q. Is that the kind of business that was moving from that territory?

A. Yes.

Q. Is that of the present time or of that date?

A. Of that date I should say it would have been less than eighteen tons. Of course, the carload loading has been increased from year to year as a matter of efficiency.

Q. Suppose we take it as high as twenty tons; what would be the greatest movement shown in tons, taking 5,073 as the greatest number of cars shown for any year?

A. 101,460 tons.

Q. Now, let us resume our consideration of your rules as to preferential solicitation and routing and apply them to Atlantic seaboard territory. You might define Atlantic seaboard territory so as to have the whole thing at one time.

A. Atlantic seaboard territory embraces all points east of a line drawn from Toronto through Buffalo, Pittsburgh, and Wheeling to Bristol, Tennessee, and north of the line of the Norfolk & Western Railway from Bristol to the Atlantic Ocean.

2157 Q. Do the Central Pacific lines cut any figure in traffic to and from Atlantic seaboard territory from and to southern California?

A. With the exception of the limited amount of citrus fruit which, I have stated, shippers from southern California send by Sacramento and Ogden, for climatic or commercial reasons, some of which reaches Atlantic seaboard territory.

Q. The Central Pacific does not cut any figure in shipments between southern California and Atlantic seaboard territory, for the same reasons as govern its shipments between southern California and Middle West territory?

A. Yes.

Q. Do the Central Pacific lines reach Oregon?

A. They do not, with the exception of a small branch from Weed that just extends over the Oregon boundary to Kirk.

Q. Then we will confine our question to the territory which the Central Pacific lines reach in northern and central California, on the one side, and Atlantic seaboard territory on the other, and apply your policy of solicitation and routing of traffic moving between those two territories, and state what the result is.

A. For such character of traffic as the Sunset-Gulf route is
2158 physically able to handle, the preferential solicitation is in favor of the Sunset-Gulf route, modified only by the necessity of giving the shipper the best service satisfying him and retaining his traffic.

Q. The preference is given to the Sunset-Gulf route, as you describe, over what route?

A. Over all routes; over the Ogden route.

Q. I believe you have already stated what part of the Atlantic seaboard territory is directly reached by the Sunset-Gulf route.

A. New York Harbor only.

Q. Is there any Atlantic seaboard territory business which the Sunset-Gulf route is physically unable or unfit to move?

A. A very large volume of the traffic is of a character that the Sunset-Gulf route is physically unable to handle.

Q. Will you describe what that traffic is?

A. The Sunset-Gulf route is unable to handle any of the perishable freight, citrus fruit, deciduous fruit, or vegetables; anything that moves either under refrigeration or ventilation.

Q. Is the traffic of the character which you describe large in volume?

2159 A. It is large in volume.

Q. Is it important as a revenue producer?

A. It is.

Q. Describe such other traffic as the Sunset-Gulf route can not carry?

A. It is unable to carry such freight as fresh oysters, earthenware and crockery that is shipped in cars packed in straw, pianos which are shipped in cars—what we call "harnessed" in cars, coal and coke, automobiles and other vehicles, furniture. It is unable and unfit to handle any traffic that is not packed for shipment by sea and that does not permit of rehandling en route.

Q. What is the amount of that class of traffic?

A. It is very considerable.

Q. Are you able to give me the number of tons represented by this perishable traffic—vegetables, fruit, and so forth—eastbound, for the year ending June 30, 1914?

Mr. McCLENNEN. Is this the total traffic of the country—of the region?

The WITNESS. This answer will cover the fresh fruit and vegetables from California to Atlantic seaboard territory.

Mr. ORR. All of it?

2160 The WITNESS. No; this is our own traffic. The fresh fruit and vegetables from Atlantic seaboard territory handled by Southern Pacific lines during the fiscal year ending June 30, 1914, aggregated 122,481 tons, which represented 55.8 per cent of the Southern Pacific's total eastbound traffic.

By Mr. BLAIR:

Q. What about Asiatic traffic?

A. The Asiatic traffic to and from Atlantic seaboard territory, with origin and destination in Atlantic seaboard territory, is and has been for many years handled by the Suez steamship lines, and will hereafter be handled through the Suez Canal and the Panama Canal. The exception to that is raw silk, which is imported through Pacific ports and is handled by passenger-train service across the continent.

Q. Why is that?

A. On account of the enormous value of the silk. All transcontinental lines handle the business in that way. It is said to be worth about $50,000 a car.

Q. And the passenger service represents about what time across the continent?

A. The short line?

Q. The line by which this Asiatic traffic moves.

2161 A. About five days.

Q. It would be utterly impossible for the Sunset-Gulf route to compete with that time?

A. Utterly impracticable.

Q. Would it be possible for the railway lines to have all their freight move in passenger service?

A. No.

Q. Prior to 1901 did the control or ownership of the Central Pacific lines by the Southern Pacific Company, the preferential solicitation and routing which was described, prevent competition between the Ogden route and the Sunset line or Sunset-Gulf route?

A. It did not.

Q. What was the nature of this competition, potential or active, mild or vigorous?

A. It was very active and vigorous.

Q. Desultory or continuous?

A. Continuous.

Q. What about the competition since the merger?

A. The competition since the merger has been active and vigorous between all of the rail lines, and has been very much aggravated by the opening of the Panama Canal.

2162 Q. I am speaking particularly of the competition between the Ogden route and the Sunset-Gulf route.

A. That has been active and vigorous.

Q. And has the competition for traffic existing between those two routes been confined to those routes, or has the same traffic been actively competed for by the other lines? You have mentioned both the rail lines and water carriers.

A. It has been actively competed for, and a large volume has been secured by other transcontinental lines than that of the Sunset Route or of the Ogden route.

Q. Assuming that a correct definition of "competition" is "the striving by two or more carriers for traffic which each desires to secure for its own lines", state whether there is any such striving for the traffic in question between the Ogden route and the Sunset-Gulf route, and how it is carried on. By "the traffic in question" I mean the traffic between northern and central California, we will say, and Atlantic seaboard territory.

A. The Southern Pacific maintains its own soliciting organizations and ticket offices, and actively strives to secure that traffic via the Sunset-Gulf route in so far as it is physically able to handle it.

2163 It plays a lone hand. It must secure that traffic by the efforts of its own organizations. The all-rail lines, including those operating by Ogden——

Q. Deal especially with those of the Ogden route.

A. The lines actively engaged in the business via the Ogden route maintain their own organizations, both in Atlantic seaboard territory and in California, and have a combined army of solicitors engaged in the effort to secure the traffic via the Ogden route as against the Sunset Route.

Q. In your opinion, would one more solicitor in the field with "C. P." on his cap affect the situation appreciably?

A. No.

Q. Either in respect to competition or any benefit to the public?

A. He would have nothing else to offer to the public.

Q. If the Central Pacific Railway lines were separated from the Southern Pacific system, could solicitors offer any greater inducements to the public to patronize the Ogden route than they now offer?

A. No

Q. Could they offer equal inducements?

2164 A. No; they could not offer equal inducements, because the Ogden route affords the best service, and to some extent its only service, by the use of the Southern Pacific rails.

Q. You mean, then, if the solicitors for the patronage of the public by the Ogden route could not offer to the public that part of the service which is contributed to that route by the lines of the Southern Pacific system other than those owned by the Central Pacific they could not offer as efficient service as they now offer?

A. That is my meaning.

Q. Will you state some of the lines of the Southern Pacific, other than those standing in the name of the Central Pacific, which participate in the Ogden route and contribute to its efficiency?

A. The Benicia line between Sacramento and Oakland.

The Southern Pacific line between Redwood and San Francisco and the entire Southern Pacific terminal facilities in San Francisco, railroad tracks and everything else.

Q. What is the particular advantage and importance of that line from Redwood to San Francisco?

A. It is the only direct entrance by railroad track into San Francisco.

2165 Q. So that without it the Ogden route would not have a rail line into San Francisco, would it?

A. It would not.

Q. And it would depend upon ferry service entirely?

A. It would be dependent upon ferry service.

Q. Is ferry service ever confused, congested, or blocked by any natural causes?

A. Yes; it is naturally limited.

Q. What is that?

A. It is naturally limited.

Q. How about the effects of fog on it?

A. The San Francisco fogs have a reputation. They would certainly affect the service.

Q. How many railroad companies maintain soliciting organizations in California which are striving to route Atlantic seaboard traffic otherwise than over the Sunset-Gulf route?

A. Forty-six.

Q. Have you a list of them?

A. Yes; I have.

Q. Will you please produce it?

A. Here it is [producing paper].

2166 Mr. McCLENNEN. This is a list of those maintaining a soliciting organization in San Francisco?

The WITNESS. In California.

By Mr. BLAIR:

Q. By maintaining soliciting agents in California, do you ma at one point or generally throughout California?

A. They cover the entire State.

Q. And there are forty-six of them?

A. Forty-six.

Q. How many maintain soliciting organizations for the same pu pose in Atlantic seaboard territory?

A. Fifty-nine.

Q. Have you a list of them?

A. I have.

Q. And this is in addition to the soliciting organizations that t Panama Canal carries?

A. Yes, sir.

Q. And the Sunset-Gulf route fights this whole field?

A. Yes, sir.

Mr. BLAIR. Counsel puts in evidence, first, the list of lines ma taining soliciting organizations in California.

(The list referred to was thereupon marked "Defendan
2167 Exhibit (Spence) No. 58, April 21, 1915", and will be fou in the volume of defendants' exhibits.)

Mr. BLAIR. Counsel for the defendants puts in evidence also t list of lines maintaining soliciting organizations in Atlantic seabo territory.

(The list referred to was thereupon marked "Defendants' Exhi (Spence) No. 59, April 21, 1915", and will be found in the volu of defendants' exhibits.)

(Whereupon, at 12.30 o'clock p. m., a recess was taken until o'clock p. m.)

AFTER RECESS.

(The testimony of James Speyer, taken during the afterno session, will be found at the conclusion of the testimony of Lewis Spence.)

(Whereupon, at 4 o'clock p. m., an adjournment was taken un to-morrow, Thursday, April 22, 1915, at 10.30 o'clock a. m.)

2168 TWENTY-SEVENTH DAY.

ROOM 2506, 165 BROADWAY,
New York City, Thursday, April 22, 1915.

The hearing was resumed, pursuant to adjournment, at 10.30 o'clo a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Ed ward F. McClennen, Esq., and Edward E. Gann, Esq., special ass ants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. air, Esq., and Garret McEnerney, Esq., for the Southern Pacific mpany.

69 LEWIS J. SPENCE, the witness under examination at the taking of adjournment, resumed the stand and testified fur-er, as follows:

Direct examination (continued) by Mr. BLAIR:

Q. Mr. Spence, when you were last on the stand you were talking out the number of soliciting organizations out in California; I ould ask you whether in your opinion this multiplicity of solicitors nfers any very appreciable benefit upon the shipping public?

A. No; because the same rates, facilities, and service are available the shipper whether he is solicited or not.

Q. Wherein does the competition between routes which you have ferred to benefit the public?

A. Chiefly in service. Every route finds it necessary to keep the rvice up to its highest efficiency in order to secure its share of the affic.

Q. It is upon service, then, that successful competition depends?

A. Yes.

Q. You have stated that at first the Sunset-Gulf route got 170 ahead of all the all-rail lines and secured the greater part of the traffic, especially the westbound traffic to and from Atlan-c seaboard territory and California; how did the all-rail lines catch p with the Sunset-Gulf route?

A. By gradual coordination of their efforts and improvements of eir service, and an improvement of their facilities, handling claims nd everything else that pertained to the public welfare and con-enience.

Q. That could be embraced in one term, could it not—by an im-rovement in their service?

A. Yes; by an improvement in their service.

Q. Was the service on the Sunset-Gulf route improved itself, mean-me?

A. It was improved very materially.

Q. Will you please give a brief statement indicating the progres-ve improvement in service on the Sunset-Gulf route?

A. As the line was improved the time was shortened on the rail line. ew and faster and larger steamers were added to the fleet. Exten-ve terminals were acquired at Galveston, whereby the through traf-c was handled at Galveston instead of by New Orleans, and a rail haul of 300 miles saved; all of which contributed to shorten 171 the time and improve the through service.

Q. That rail haul was between what points?

A. Between New Orleans and Houston.

Q. Was there any increase in the number of sailings?

A. There was no increase in the frequency of the sailings, b there was an increase in the fleet and in the capacity of the steam so that there was an increase in the available facilities.

Q. And you had sailings from both New Orleans and Galvest

A. From both New Orleans and Galveston.

Q. Is there much difference now between the time occupied transporting freight by the all-rail lines and by the Sunset-G route?

A. No; the average time between New York and San Franci to-day is about equal.

Q. Was the change from New Orleans to Galveston one of t causes of the shortening of the through time?

A. Yes.

Q. What were some of the improvements on the all-rail line, a of the Ogden route, during this period?

Mr. McCLENNEN. What defines "this period"?

2172 By Mr. BLAIR:

Q. By "this period" I mean the whole time when the a rail lines were catching up with and going past the Sunset-G route.

A. Through billing was being established by the several all-r lines, through cars without transfer were being established, t physical condition of the railroads was being improved, and t through passenger service was being correspondingly improved.

Q. Have you in operation on the Ogden route any merchandi cars?

A. Yes. We join the Union Pacific in operating five package c daily from Chicago to San Francisco, five from Chicago to Sac mento daily, three package cars weekly from St. Louis to San Fra cisco, three package cars weekly from St. Louis to Sacramento, a three package cars weekly from Kansas City to Sacramento.

Q. What do you mean by "package cars"?

A. These cars assemble the less-than-carload merchandise traf from all points east of the junctions specified as well as the traf originating at those points. They run through from those points t San Francisco and Sacramento.

2173 Q. What system have you inaugurated, or what system h been inaugurated, for insuring expedited service in oth ways?

A. We have a manifest system in effect, the same by the Ogd route and by the Sunset Route.

Q. Explain that.

A. Whereby each car is manifested, given a manifest number, and pies of that manifest are transmitted to each important division int on our own line and on the Union Pacific, via Ogden, and the ovement of each car is telegraphed by each of those junction points each of the others, so that the movement is constantly watched om point of shipment, and the whereabouts of the car is always own, and the time of its arrival at destination is also known.

Q. Which expedites the traffic and also enables the owner to escer- in the whereabouts of his car?

A. Of his car.

Q. And to ascertain when it may be expected to arrive?

A. Yes.

Q. How about the handling and adjustment of claims?

A. The handling and adjustment of claims, in which the Sunset Route was originally the pioneer, is now uniform on
1174 the Sunset Route and on the Ogden route. In fact, it is uniform, I think, upon all routes in the country, because there is ow in existence an association, of which all important lines are embers. That association is the medium through which adjustents or arrangements for adjustments are made between all the nes of the country, whereby they are facilitated; and the methods f that association have had the informal approval of the Interstate ommerce Commission.

Furthermore, the law has been amended whereby the initial carier, the maker of the bill of lading, is responsible to the shipper for oss or damage en route, no matter whether it occurs on the initial ine or some other part of the line, and he is required to promptly ay the claim and look to his connections for settlements in the vent of their liability.

Q. Will you give us a statement as to the improvement and hanges in the passenger service along both routes? If you have it n the form of a statement, you may produce it and explain the tatement briefly.

A. (Producing statement.) First, by the Sunset Route in Decemer, 1885, one through daily train was in operation between New Orleans and San Francisco. The time from New Orleans to
1175 San Francisco was four days, seventeen hours, and ten minutes.

In December, 1900, one through daily train was in operation beween New Orleans and San Francisco, and the time from New Oreans to San Francisco was four days, one hour, and thirty minutes.

In December, 1914, two through daily trains were in operation beween New Orleans and San Francisco, and the time from New Orleans to San Francisco was, by the Sunset Route, three days six

hours and thirty minutes. The eastbound time was correspondingly improved, as shown in the memorandum.

Q. Have you likewise prepared a statement in detail showing the progress and improvement in the service of the Sunset Route?

A. I have.

Mr. BLAIR. Counsel for the defendants puts in evidence the statement referred to by the witness, a part of which has been embraced in his testimony.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 60, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Have you prepared a similar statement with reference
2176 to the passenger service via the Ogden route?

A. I have.

Q. Give a few of the salient features of that progress in the service and then we will offer in evidence your statement.

A. In December, 1885, there was no through train in operation between Chicago and San Francisco. Direct connections were made daily at Omaha and Ogden.

Q. There was always a through train, so far as the Central Pacific——

A. By Omaha.

Q. (Continuing.) And the Union Pacific was concerned?

A. Yes.

Mr. MCCLENNEN. I do not get that. Does that mean that it was through from Omaha to San Francisco?

The WITNESS. Yes; it was through from Omaha to San Francisco.

By Mr. BLAIR:

Q. Proceed.

A. The time from Chicago to San Francisco was four days fifteen hours and ten minutes.

2177 In December, 1900, there were two through trains daily in operation westbound from Chicago to San Francisco and three daily trains eastbound between San Francisco and Chicago. The time from Chicago to San Francisco was three days, two hours and fifteen minutes.

In December, 1914, there were three through daily trains in operation, westbound, and four daily trains eastbound, between Chicago and San Francisco. The time from Chicago to San Francisco by the Overland Limited, was two days, seventeen hours and ten minutes.

A corresponding improvement is shown in the eastbound time.

Q. Have you prepared an exhibit showing, in greater detail, the progress of passenger service improvement over the Ogden route?

A. I have.

Mr. BLAIR. Counsel for defendants puts in evidence the statement just referred to by the witness.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 61, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

2178 Q. We will interrupt the line of your testimony a moment here, Mr. Spence. In your testimony of yesterday you referred to a certain exhibit of the Government, No. 22, as showing the amount of transcontinental traffic which the Santa Fe secured in the early days, prior to 1899. You referred to Exhibit No. 22, I believe. I did not have it at the time. I now have it, and hand it to you. Will you point out on Exhibit No. 22 what you had reference to?

A. Petitioner's Exhibit No. 22 shows that during a period of fifteen months from October 1, 1884, to December 31, 1885, the Santa Fe handled, by its Mojave route, 20.34 per cent of the through transcontinental business.

Q. That is what you had reference to?

A. Yes.

Q. The exhibit speaks of that route as "Via Southern Pacific and Atlantic & Pacific." Is the Atlantic & Pacific the same as the Santa Fe?

A. Yes; it forms the Santa Fe route via Mojave.

Q. When you testified yesterday in regard to electric lines being opened in California, the Central California Traction Company between Stockton and Sacramento, the Northern Electric between Sacramento and Marysville and Chico, and the Oakland, Antioch

2179 & Eastern between Sacramento and Oakland, Mr. McClennen suggested that you had not stated when these electric lines were opened. I intended to ask you, but neglected to do so. Can you give us about what time those lines were opened for service?

A. I am unable to give from memory the dates of the opening of those lines, but my recollection is that they all have been opened for service within the last five years.

Q. If that is as near as you can come it will be sufficient.

Going back, now, to the regular order of your testimony, what are the relations between the Union Pacific and the Southern Pacific in respect to the through route via Ogden?

A. There are but few connecting lines whose relations are as close and coöperative. There are no connecting lines whose relations are closer and more coöperative than the relations between the Union

Pacific and the Southern Pacific. The lines are operated as o
connected, continuous line.

Q. What about the personal relations between the officers of th
lines in respect to mutual satisfaction as to the nature and extent
the coöperation?

A. They are exceedingly cordial and cooperative. I do n
2180 know of a complaint on either side, and I know of no ca
for complaint on either side.

Q. What arrangements have you, for instance, with them in reg
to advertising the Ogden through route?

A. We joined the Union Pacific in advertising the through tr
service between Chicago and San Francisco by the annual creation
a joint advertising fund, to which the lines contribute on a pro ra
basis. Very much the largest share of that fund is spent in we
bound advertising, and is placed in the hands of the Union Paci
for that purpose.

Q. They spend the fund to which you contribute as they see fit?

A. Yes.

Q. Can you give us the approximate amount annually which
expended for this westbound advertising?

A. The amount spent, between Chicago and San Francisco, durin
the current year will be about $140,000.

Q. What have been the results of this coöperative effort to affo
the pubilc a through line via Ogden? What kind of a line is th
through line thus created?

A. Briefly stated, the results of this coöperation have be
2181 to establish the best through transcontinental line, takin
passenger and freight service together, across the country.

Q. Of all the all-rail lines that you have mentioned, in your opi
ion, the Ogden route is the best?

A. Yes.

Q. Mr. Spence, state whether or not the Union Pacific is more o
less at the mercy of the Southern Pacific now than it was just befo
the merger in 1901 in respect to securing good service, reasonabl
terms and facilities, and so forth, for engaging in transcontinenta
business via the Ogden route, and give the facts upon which you
answer is based.

A. Prior to 1901 the Union Pacific had, beside the Southern Pa
cific west of Ogden as a connecting line, its rail route to Portlan
and its steamship line thence to San Francisco as its only alternativ
route. Since that time the Western Pacific and the San Pedro, Lo
Angeles & Salt Lake Railways have been constructed, affording th
Union Pacific various routes; the interstate commerce law wa
amended in 1906, delegating authority to the Interstate Commerc
Commission to establish through routes and joint rates, whic

gives the Union Pacific an absolute guaranty of the continua-
182 tion of through routes and joint rates; in 1910 the commission was given authority to suspend advanced rates, and by the me amendment to the law the shipper was given authority to route is freight, and the carriers were required to respect his routing.

Q. What kind of service is maintained by the Southern Pacific er its end of the Ogden route; that is, between Ogden and San rancisco? I mean in respect to the maintenance of the road as ell as in respect to the equipment and all the elements that go into rvice.

A. The service on the line west of Ogden is not excelled anywhere, nder like conditions.

Q. What do you mean by "under like conditions"?

A. The character of the country, the density of the traffic, and the opulation.

Q. State any facts that you may know tending to show whether ie Southern Pacific Company has any interest or motive to impair is service over the Ogden route.

A. In the first place, the Southern Pacific Company has a very rge investment in the Central Pacific, upon which it is anxious to rn a return. In the second place——

Q. Just give the general character of that investment
183 without going much into detail.

A. It owns the stock, and is the guarantor of the bonds. In the second place, the Southern Pacific is dependent upon the entral Pacific, west of Ogden, as the only route by which it can ccessfully compete for the traffic to and from the Middle West rritory, and also dependent upon that route to successfully com-ete for a large share of the traffic to and from the Atlantic sea-oard territory for which the Sunset-Gulf route is physically unable compete. These conditions not only afford no motive for impair-g the service, but they afford every incentive for keeping the serv-e up to its maximum efficiency.

Q. Could you impair the service on your part of the Ogden route ith a view to benefiting the Sunset-Gulf route in respect to the mited traffic for which those two routes offer alternative routes ithout at the same time impairing the service and injuring the gden route in respect to this traffic as to which the two lines do not ffer alternative routes?

A. No.

184 Q. Have you prepared a statement showing the total tonnage from and to all territories moving via the Ogden route s compared with the movement to and from Atlantic seaboard ter-itory?

A. I have.

Q. Was this statement prepared under your direction?

A. It was.

Q. Is it correct, to the best of your knowledge, information, a belief?

A. It is.

Q. Was it prepared from the statistics which were secured in or to furnish the petitioner with the traffic exhibits put in by it?

A. From the same statistics.

Q. Of course, throughout this testimony, by "Ogden route" mean over the Central Pacific to Ogden and the Union Pacific a its connections.

A. I am testifying with that understanding.

Q. This statement deals with tonnage moving over the Ogd route?

A. Yes.

2185 Q. How much of the transcontinental freight handled v the Ogden route during the fiscal year ending June 30, 19 had origin or destination in Atlantic seaboard territory?

A. 223,145 tons.

Q. How many tons had origin or destination in other territory?

A. 1,141,597 tons.

Q. What percentage of the total tonnage passing over the Ogd route is represented by Atlantic seaboard territory tonnage?

A. 16.3 per cent.

Q. In this Atlantic seaboard territory is included the traffic whi you mentioned yesterday in your testimony as traffic which t Sunset-Gulf route was physically unable to carry?

A. Yes.

Mr. BLAIR. Counsel for the defendants puts in evidence the sta ment just referred to by the witness.

(The statement referred to was thereupon marked "Defendan Exhibit (Spence) No. 62, April 22, 1915", and will be found in th volume of defendants' exhibits.)

By Mr. BLAIR:

2186 Q. Are you familiar, Mr. Spence, with the petitioner exhibits, which have been numbered here 43 to 58, containi certain traffic statistics?

A. Yes.

Q. Under whose directions were they prepared?

A. They were prepared under my direction.

Q. How was the material therefor obtained?

A. It was collected by the employment of seventy-six extra clerk

Q. What period is covered by these statistics?

A. The fiscal year beginning July 1, 1913, and ending June 30, 914.

Q. The Atlantic seaboard territory referred to in these statistics, suppose, embraces the same territory as the Atlantic seaboard terri- ory referred to in your previous testimony?

A. It does.

Q. And the same is true of the Middle West territory appearing n the statistics?

A. Yes.

Q. When you speak of traffic on those statistics as via El Paso, that does not necessarily mean traffic via the Sunset-Gulf route?

187 A. No, sir; it means the traffic passing through El Paso.

Q. Whether it goes further on by means of connections at l Paso or between El Paso and New Orleans or whether it goes by he Sunset-Gulf route?

A. It includes all traffic interchanged with connections at El Paso.

Q. The revenue referred to in the petitioner's exhibits and referred o in the additional exhibits which will be offered in connection with our testimony upon tonnage routed via Ogden is revenue accruing o the Southern Pacific Company, including the Central Pacific west f Ogden. Is that true?

A. Yes.

Q. And the revenue in the exhibits upon tonnage routed via El aso is that accruing to the Southern Pacific, including the Central acific, west of New York or New Orleans or El Paso or other Texas ateway through which the traffic moved?

A. All of the revenue accuring to the Southern Pacific system; yes.

188 Q. In the movement via the Ogden route what was the aver- age length of haul upon which the Southern Pacific earned its evenue?

A. The average haul was from 800 to 900 miles.

Q. When the movement was via El Paso what was the average ngth of haul upon which the Southern Pacific earned its revenue?

A. From about 1,000 miles to about 4,000 miles.

Q. In these statistical statements what does traffic to and from ints in Oregon include?

A. It includes all traffic from and to points in Oregon and any affic going to points north of Portland or originating at points rth of Portland, the only exception to that statement being what- er small amount of traffic there may be on the little branch that ns from Weed across the border into Kirk, Oregon.

Q. And in what have you included the revenue from that little anch?

A. That is included in California tonnage and revenue wherever California tonnage and revenue is introduced.

Q. Why was that?

A. Because the traffic is carried off from the main line of
2189 the Central Pacific by a branch line of the Central Pacific and is subject to the same general conditions as all northern California movements.

Q. Referring to petitioner's Exhibit 43–4, covering all tonnage routed via Ogden to and from Atlantic seaboard territory, and to petitioner's Exhibit 45–6, covering all tonnage routed via Ogden to and from Middle West territory, do they embrace all points west of Ogden that can be routed by the Ogden route?

A. They do.

Q. Now, referring to petitioner's Exhibit 47–8, covering all tonnage routed via El Paso to and from Atlantic seaboard territory, and to petitioner's Exhibit 49–50, covering all tonnage routed via El Paso to and from Middle West territory, what territory on the west has been included under the designation of "West of Ogden" and "West of El Paso"?

A. All points west of El Paso, including New Mexico and Arizona; all of California, Oregon, and Nevada.

Q. The boundaries west of Ogden and west of El Paso were boundaries designated by the petitioner in his request for the statistics?

A. Petitioner asked for the statistics covering the traffic routed via El Paso to and from all points west of Ogden; and
2190 we, therefore, included in the statistics all points west of El Paso for that reason.

Q. What is the eastern or southeastern boundary of Pacific coast territory to and from which through rates are applicable via the Ogden route?

A. They apply to points as far southeast in California, to and from points, as Banning, a point about eighty-six miles east of Los Angeles.

Q. So that in the Government's statistics of freight passing via El Paso there is necessarily included, from your description of the boundaries, a great deal of traffic which in no sense would be competitive to the Ogden route; is that true?

A. That is correct.

Q. Have you prepared statistics of the tonnage via El Paso which includes all tonnage to and from points west or northwest of Banning, California?

A. I have.

Q. In other words, they would exclude from the Government's statistics what was not in any way or in any sense open to the Ogden route?

A. Yes; the statement is made to make the statistics properly comparable.

2191 Q. Will you produce that statement?

A. Here it is.

Q. The statement which you produce is one of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including the relatively small amount of traffic interchanged with the Santa Fe at Deming) between all points west of Ogden, Utah, open to traffic via Ogden gateway in the sense in which you have explained, and Atlantic seaboard territory. Is that the statement you have produced?

A. That is correct.

Q. Have you prepared a statement embracing all traffic to and from the Pacific coast territory that is covered by petitioner's Exhibit 45–46, showing traffic routed via El Paso to middle west territory?

A. I have.

Q. Will you produce it?

A. That is the statement I have just handed to you.

Q. That is a statement that covers freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway (including the relatively small amount of traffic interchanged

2192 with the Santa Fe at Deming) between all points west of Ogden, Utah, open to traffic via the Ogden gateway to middle west territory as defined. Are both these statements correct?

A. They are both correct.

Q. They were prepared under your supevision?

A. Yes.

Mr. BLAIR. Counsel for the defendants puts in evidence the two statements referred to by the witness, one of which is headed S–1 and the other of which is headed S–2.

(The statements referred to were thereupon marked, respectively, "Defendants' Exhibit (Spence) No. 63, April 22, 1915", and "Defendants' Exhibit (Spence) No. 64, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Have you prepared another statement making a comparison of commerciel freight tonnage and revenue of the Southern Pacific Company on traffic moved by the El Paso gateway with that moved by the Ogden gateway?

A. Yes.

Q. Under whose supervision and direction were those statistics prepared?

2193 A. Under my supervision.

Q. Are they correct?

A. Yes.

Q. Were they compiled from the same material and data from which the petitioner's exhibits were prepared?

A. Yes, sir.

Q. This is revenue, as shown here, via El Paso and via Ogden. Will you state any reasons why the revenue part is not fairly comparable?

A. The revenue on traffic via Ogden represents an average service of from 800 to 900 miles. The revenue upon tonnage via El Paso embraces all of the revenue, whether from El Paso, Alpine, Texas, New Orleans, or New York. That is to say, it embraces all of the revenue accruing to the Southern Pacific lines, which ranges from 1,000 to 4,000 miles.

Mr. BLAIR. Counsel for defendants puts in evidence the statement just referred to by the witness, it being a comparison of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via El Paso gateway with that moved via Ogden gateway, between all points west of Ogden, Utah, open to traffic

2194 via Ogden on the one hand and Atlantic seaboard territory and Middle West territory on the other hand, it being headed S-4.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 65, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. When you say "open to traffic via Ogden" you mean that the rates are the same?

A. The tonnage via El Paso embraces all of the tonnage to and from western territory that is open to the Ogden route; that is, by which the rates apply.

Q. It includes traffic in southern California, though?

A. And Oregon.

Q. I want to call your attention to petitioner's Exhibit 51-32, covering traffic which originated or was delivered at points reached by the Central Pacific, whether it moved over the Central Pacific line or not, this exhibit being confined to traffic routed via El Paso. Did you include in this exhibit San Francisco traffic as well as Oakland and San Jose traffic?

A. Yes.

2195 Q. Although the Central Pacific really has not a line into San Francisco?

A. Yes; and may not have hauled Oakland and San Jose traffic. e included Oakland and San Jose because the request included that ffic.

Q. Whether that traffic was touched or handled by the Central cific or not?

A. Yes.

Q. Have you prepared a similar statement covering the traffic uted via Ogden?

A. I have.

Q. This statement is a statement of commercial tonnage and rev- ue of Southern Pacific Company on traffic which originated, assed over, or was delivered on Central Pacific Railroad moving via gden gateway to and from Atlantic seaboard territory?

A. That is correct.

Mr. BLAIR. Counsel for defendants puts in evidence the statement ferred to by the witness, which is headed S–4.

(The statement referred to was thereupon marked "Defendants' xhibit (Spence) No. 66, April 22, 1915", and will be found in the volume of defendants' exhibits.)

1096 By Mr. BLAIR:

Q. This offers the other side of the picture to petitioner's xhibits, does it not?

A. It does.

Q. Have you prepared a similar statement referring to Middle Vest territory?

A. I have.

Q. This is a statement of commercial tonnage and revenue of Southern Pacific Company on traffic which originated, passed over, r was delivered on Central Pacific Railroad, moving via Ogden ateway, to and from Middle West territory?

A. Yes.

Mr. BLAIR. Counsel for defendants puts in evidence this statement, hich is headed S–5.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 67, April 22, 1915", and will be found in the olume of defendants' exhibits.)

By Mr. BLAIR:

Q. Have you prepared a statement making a comparison of this affic routed via Ogden with that routed via El Paso?

A. I have. Here it is.

1097 Q. All these statements you have introduced and are introducing are correct and are prepared in the same way?

A. They are.

Mr. BLAIR. Counsel for defendants introduces in evidence the statement referred to, which is a comparison of commercial tonnage and revenue of Southern Pacific Company on traffic via El Paso and via Ogden which originated, passed over, or was delivered on Central Pacific Railroad to and from Atlantic seaboard territory and Middle West territory. This statement is headed S–6.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 68, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Coming now to petitioner's Exhibits 53 and 54, which cover traffic moved via El Paso between all points in Nevada and Atlantic seaboard territory and Middle West territory, respectively, have you prepared like exhibits covering the traffic moved via Ogden?

A. Yes.

Q. And a statement making a comparison of that routed via Ogden with that moved via El Paso?

A. I have.

2198 Q. I have now called for three statements, which you have produced?

A. Yes.

Mr. BLAIR. Counsel for the defendants put in evidence the three statements, the first headed S–7, it being a statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway between all points in Nevada and Atlantic seaboard territory.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 68½, April 22, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. The second statement is headed S–8, and is a statement of commercial freight tonnage and revenue of the Southern Pacific Company on traffic moved via Ogden gateway between all points in Nevada and Middle West territory.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 69, April 22, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. The third statement is headed S–9, and is a comparison of commercial tonnage and revenue of Southern Pacific Company on traffic moved via El Paso and Ogden gateways, between

2199 points in Nevada and Atlantic seaboard territory and Middle West territory.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 70, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. I call your attention now to petitioner's Exhibit No. 55, showg traffic moved via El Paso between all points in Oregon and bend and in California north of Roseville, Davis, Elmira, Suisun, d South Vallejo and Atlantic seaboard territory; and also to petiner's Exhibit No. 56, showing movements between the same Pacific ast territory and Middle West territory.

A. Yes.

Q. Those statistics, I understand, include all traffic originating rth of the Southern Pacific's main line, Roseville to San Franisco included?

A. They do.

Q. Have you prepared exhibits showing the like traffic routed via gden and an exhibit showing the comparison of the traffic routed ia Ogden with that routed via El Paso?

A. I have.

Q. My call brings from you three statements?

2200 A. Yes.

Mr. BLAIR. Counsel for defendants puts in evidence the three statements, the first being headed S–10, it being a statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Atlantic seaboard territory.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 71, April 22, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. The next statement is headed S–11, and is a statement of commercial tonnage and revenue of Southern Pacific Company on traffic moved via Ogden gateway between all points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo and Middle West territory.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 72, April 22, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. The third statement is headed S–12 and is a com-

2201 parison of tonnage and revenue of Southern Pacific Company via El Paso as shown in petitioner's Exhibits Nos. 55 and 56 with that via Ogden on traffic moved between Atlantic seaboard territory and Middle West territory, on the one hand, and points in Oregon and beyond and in California north of Roseville, Davis, Elmira, Suisun, and South Vallejo.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 73, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Are there any reasons why the comparison between the mo
ment via the Ogden route and the movement via El Paso for t
period covered by these statements is not a fair comparison?

A. Yes. The tonnage via the Ogden route is not normal, becau
the route was not opened to traffic to and from Oregon until Ju
15, 1914; so that the major part of the Oregon traffic moved v
Portland. About eighty per cent of the traffic was moved via Po
land.

Q. That was due to the closing of the Roseville gateway, to whi
you have referred?

A. Because the Roseville gateway was closed; yes.

Q. The Roseville gateway was closed during the regi
2202 of the Union Pacific?

A. Yes.

Q. And did you begin to take steps immediately after the merg
to reopen that gateway?

A. We took steps at once and we encountered some long and sh
haul difficulties that delayed the opening of it, but finally opened it
June, 1914, the year covered by the statements.

Q. The tonnage which would have moved via Ogden, if it had b
open, was routed via what points?

A. Chiefly via Portland.

Q. Do these statements, both the petitioner's exhibits and ou
include traffic having origin and destination on the Northweste
Pacific and on the Southern Pacific line north of Vallejo, Suis
Elmira, and Davis?

A. They do.

Q. Are those points also on the Central Pacific?

A. None of them, except Marysville and Tehama.

Q. How would you explain the large excess of eastbound tra
shown in petitioner's Exhibit No. 55?

A. The excess of eastbound over westbound?

A. Yes.

2203 A. The eastbound tonnage originates at the interior poi
The westbound tonnage goes to——

Q. I am speaking of petitioner's Exhibit No. 55, which is o
which deals with traffic north of these points, Roseville, Sacramen
and other points.

A. Do you mean why does the eastbound so largely exceed t
westbound?

Q. Yes.

A. The westbound tonnage does not go directly to the destinatio
It goes to Oakland and Sacramento and is jobbed.

Q. And your statement, by its definition, excludes those jobbing
ints?
A. Yes; it does not include those jobbing points.
Mr. McCLENNEN. By "jobbing" you mean the jobbing of the
mmercial houses?
The WITNESS. Yes.
Mr. McCLENNEN. And not the jobbing of the railroad?
The WITNESS. No.

By Mr. BLAIR:

Q. Coming now to petitioner's Exhibit No. 57, covering traffic via El Paso gateway between San Francisco and Oakland
04 and Atlantic seaboard territory, and petitioner's Exhibit No. 58, covering traffic moved via El Paso between San Francisco
d Oakland, California, and Middle West territory, have you pre-
red exhibits showing similar traffic routed via Ogden?
A. I have.
Q. And a comparison of the statements?
A. Yes.
Mr. BLAIR. Counsel for defendants puts in evidence the three
tements just produced by the witness, one headed S–13, being a
tement of commercial tonnage and revenue of Southern Pacific
mpany on traffic moved by Ogden gateway between San Francisco
d Oakland, California, and Atlantic seaboard territory.
(The statement referred to was thereupon marked "Defendants'
hibit (Spence) No. 74, April 22, 1915", and will be found in the
lume of defendants' exhibits.)
Mr. BLAIR. The second statement is headed S–14, and is a state-
nt of commercial tonnage and revenue of the Southern Pacific
mpany on traffic moved via Ogden gateway between San Francisco and Oakland, California, and the Middle West territory.
05 (The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 75, April 22, 1915", and will
found in the volume of defendants' exhibits.)
Mr. BLAIR. The third statement is headed S–15, and is a compari-
n of commercial tonnage and revenue of the Southern Pacific Com-
ny on traffice moved via El Paso gateway and via Ogden gateway,
tween San Francisco and Oakland, California and Atlantic sea-
ard territory and Middle West territory.
(The statement referred to was thereupon marked "Defendants'
hibit (Spence) No. 76, April 22, 1915", and will be found in the
lume of defendants' exhibits.)

By Mr. BLAIR:

Q. How would you explain the excess of westbound over east-
und traffic in the statements just offered in evidence?

A. These are statements of westbound traffic of Oakland and San Francisco, which, as I have previously stated, are not only large consuming points, but are the points at which the traffic is jobbed by the jobbers to all the surrounding country.

Q. How would you explain the movement of as much as 40,000 tons via El Paso from Middle West territory, as contained, say, in petitioner's Exhibit No. 58?

2206

A. That traffic is, in the main, delivered to us at El Paso by the Rock Island. They have their own organization in California and throughout the country actively soliciting the traffic for their long haul, which is at El Paso.

Q. You have an arrangement for handling that business?

A. We have an arrangement.

Q. Can you say whether the amount of traffic which simultaneously was secured over the Santa Fe for the same territory was as large as that over the Rock Island or larger?

A. I should say that it was larger.

Q. I believe you have testified, yesterday, that the Central Pacific lines do not cut any figure in transcontinental traffic having its origin or destination in southern California.

A. Yes.

Q. And that they are not initial lines in Oregon?

A. Yes.

Q. Have you prepared a statement showing the tonnage moved via El Paso and via Ogden between points in southern California as defined—and by "as defined" I mean south of Tehachapi or south of a line between Santa Barbara and Mojave—and points in Oregon on the one hand and points in Atlantic seaboard territory on the other?

2207

A. I have.

Mr. BLAIR. Counsel for the defendants put in evidence the statement just referred to, it being headed S–17, and being a statement of commercial tonnage moved via El Paso and Ogden between points in California, Banning to Mojave and Santa Barbara, inclusive, and points in Oregon on the one hand and points in Atlantic seaboard territory on the other.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 77, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. In other words, the statement which I have just referred to affords the basis of cutting out from the previous statements in reference to Atlantic seaboard territory so much thereof as has origin or destination in Oregon or in southern California?

A. Both by El Paso and by Ogden.

Q. Have you a similar statement which will serve the same purpose in respect to traffic to and from Middle West
2208 territory?

A. I have.

Mr. BLAIR. Counsel for defendants puts in evidence the statement st referred to, it being headed S–16, and being a statement of commercial tonnage moved via El Paso and Ogden between points in alifornia, Banning to Mojave and Santa Barbara, inclusive, and oints in Oregon on the one hand and points in Middle West territory on the other.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 78, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Have you prepared statements which eliminate the Oregon and outhern California tonnage from the traffic statistics offered as exhibits by petitioner, and which show the movement of traffic between points south of the Oregon-California line and north of Mojave and Santa Barbara on one hand, and points in Middle West territory and Atlantic seaboard territory, respectively, on the other hand?

A. I have.

Q. Moving either way?

A. Yes.

2209 Mr. MCCLENNEN. Does that include both territories?

The WITNESS. Yes.

Mr. MCCLENNEN. And both gateways—both Ogden and El Paso?

Mr. BLAIR. It includes both gateways.

Counsel for defendants puts in evidence the statements just produced by the witness, the first of which is headed S–18, and is a statement of commercial tonnage moved between points west of Ogden, Utah, south of the Oregon-California State line, and north of Mojave and Santa Barbara on the one hand and Middle West territory on the other hand.

(The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 79, April 22, 1915", and will be found in the volume of defendants' exhibits.)

Mr. BLAIR. The other statement is offered by counsel for the defendants, and is headed S–26, it being a statement of commercial tonnage moved between points west of Ogden, Utah, south of the Oregon-California State line and north of Mojave and Santa Barbara on the one hand and Atlantic seaboard territory on the other hand.

(The statement referred to was thereupon marked Defendants' Exhibit (Spence) No. 80, April 22, 1915", and will be found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. We have the different routes on these tables described in s way; via Ogden is our old friend the Ogden route?

A. Yes.

Q. Via Sunset-Gulf route we all know?

A. Yes.

Q. What is meant by "via New Orleans"?

A. It covers traffic that moves from that territory all-rail via N Orleans.

Q. Through El Paso?

A. Through El Paso.

Q. And then went all-rail to destination?

A. Yes.

Q. What is meant by the term "via El Paso and other gatew east thereof except New Orleans"?

A. That covers traffic received from connecting lines at El Pa and at any gateway east thereof to, but exclusive of, New Orleans

Q. I see here on these statements, Mr. Spence, a little traf
2211 carried by the Sunset-Gulf route to middle west territor How did that happen?

A. That is probably reconsigned traffic—traffic that was started b the shipper to one market and reconsigned en route to another.

Q. Explain that a little bit more fully.

A. They may start fruit consigned to New Orleans and reconsig it to Pittsburgh or Cincinnati or to some point in the Middle We territory after it is en route.

Q. That is the only kind of traffic that moves in that way?

A. Except an occasional car that a connecting line may secur through the consignee by their solicitation.

Q. How would you explain the movement of any traffic via Ne Orleans to Middle West territory, especially eastbound traffic?

A. That is explained in substantially the same way, the eastboun traffic; the business may be solicited by the Queen & Crescent or th Louisville & Nashville or connecting line through the consignee a Cincinnati or some point in the vicinity, and by his instructions b routed via New Orleans.

Q. By what railroad, mainly, was the traffic secured
2212 which appears on statement S–18 as moving via El Paso?

A. Chiefly by the Rock Island.

Q. Of course, this is not all the traffic, but only includes traffi which passed either by the Ogden route or the El Paso route?

A. Yes.

Q. And it includes the Asiatic traffic, I suppose—fast-freight traffic?

A. Yes.

Q. And the perishable traffic?

A. Yes.

Q. How would you explain the large percentage of the eastbound traffic via Ogden and the small percentage via the Sunset-Gulf route, as contrasted with the respective percentages of westbound traffic?

A. The eastbound traffic embraces the very large volume of business of a character for which the Sunset-Gulf route is physically unable to compete.

Q. Is there any of this traffic which is traffic to industrial companies, oil companies, or things of that kind owned by the Southern Pacific Company?

2213 A. A very considerable volume of traffic is tonnage consigned to affiliated companies owned by the Southern Pacific Company.

Q. A very considerable part of what particular routing?

A. Westbound traffic.

Q. Which passes over what route? In other words, how would the Southern Pacific Company route its own traffic that it absolutely controlled, the freight for which came out of its pocket?

A. It would route it via the nearest gateway, in order to minimize the amount of freight charges paid to foreign carriers.

Q. It would route it by the nearest gateway by which it could reach its own lines?

A. Yes. Therefore the Middle West traffic via New Orleans; the westbound consists largely of material consigned to affiliated companies.

Q. That is what I was getting at—that comparatively large movement via New Orleans is explained in that way, is it?

A. Yes.

Q. Mr. Spence, what are the chief routes in competition for Asiatic traffic?

2214 A. The Canadian Pacific via Vancouver in connection with its own steamship line across the Pacific.

The Great Northern, Northern Pacific & Chicago, Milwaukee & St. Paul, each a separate route, to Puget Sound ports, Seattle, and Tacoma, in connection with Japanese steamships operating across the Pacific, the Nippon Yusen Kaisha, and the Osaka Yusen Kaisha.

There were other steamship lines operating to and from Puget Sound ports which have less frequent sailings than these.

The Union Pacific system through Portland has the same steamship service available, making a through route via Puget Sound ports.

The Western Pacific and its connections east of Salt Lake City, the Southern Pacific-Union Pacific and its connections east, and the Santa Fe and the Southern Pacific southern route operate to San

Francisco in connection with three steamship lines across the Pacific namely the Pacific Mail Steamship Line, the Toyo Kisen Kaisha, and the Dollar Line.

There may be some others, but those are the principal ones.

2215 The San Pedro, Los Angeles & Salt Lake Railway, in connection with the Union Pacific and lines east, operate through San Pedro in connection with steamers of the Dollar Line across the Pacific.

The Atlantic-seaboard business follows the Suez routes, of which there are four steamship lines in regular operation between New York and Asiatic ports.

Q. What does the outbound Asiatic business handled through the Pacific coast consist of?

A. It consists chiefly of products originating in the Middle West such as condensed milk, machinery, canned meats, and of cotton from Oklahoma, Texas, and the Imperial Valley.

Q. What does the inbound traffic consist of?

A. The inbound traffic consists chiefly of raw silk, matting, and tea.

Q. You have explained how that moved—at least, the raw silk. How does the tea move?

A. The tea and matting are consigned, usually, to Missouri River points under storage and transfer arrangement, which exist at Kansas City, Omaha, St. Joseph, St. Paul, under which the matting and tea originally are consigned to those points and stored, and

2216 eventually distributed to points east under the through rate.

Q. Can the Sunset-Gulf route get any of this Asiatic traffic?

A. No.

Q. Would it be in a different position if the Central Pacific were not a part of its system?

A. Its position would be just the same.

Q. It is out of that, hopelessly?

A. Yes.

Q. Have you an exhibit or statement showing the eastbound tonnage delivered at Ogden to the Union Pacific as compared with the westbound tonnage received at Ogden from the Union Pacific during the two years ending June 30, 1913, and June 30, 1914?

A. I have.

Mr. BLAIR. Counsel for defendants puts in evidence the statement headed S–37, statement of commercial freight interchanged between Southern Pacific Company and Union Pacific Railroad Company at Ogden, Utah, for the fiscal years ending June 30, 1913 and 1914.

The statement referred to was thereupon marked "Defendants' Exhibit (Spence) No. 81, April 22, 1915", and will be 7 found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. The eastboard shipments represent tonnage you deliver to the ion Pacific and the westbound shipments tonnage you receive from Union Pacific?

A. Yes.

Q. It appears from your statement of 1913 that you delivered, in nd numbers, 606,000 tons and received 547,000 tons?

A. Yes; that is correct.

Q. And that in 1914 you delivered 598,000 tons and received from e Union Pacific 469,000 tons?

A. That is correct.

Q. Will you explain the difference between the figures contained this statement produced by you and those covering the two fiscal ars included in petitioner's Exhibit No. 73, produced by Mr. unroe?

A. The difference is due, first, to a difference in the method of counting, of keeping the statistics. The Union Pacific takes into count during a specific period all traffic passing the junction within that period. The Southern Pacific takes the business into 18 account under what we call interline accounts, after it is delivered to destination and the earnings reported back by e delivering line.

The second difference is that our statement does not include, in e westbound, material and supplies for our own company.

Q. You do not include, in the eastbound, material and supplies r the Union Pacific?

A. No.

Q. Mr. Spence, have you prepared a statement making a compari-n of tonnage to and from Middle West territory moved via El aso which had origin or destination on the Central Pacific bond-ded line, with tonnage moved via Ogden which had origin or estination on the Southern Pacific or Central Pacific nonbond-aided ine?

A. I have.

Q. Will you produce the statement?

A. Here it is.

Q. Is that correct?

A. That is correct.

Mr. BLAIR. Counsel for defendants puts in evidence the statem just referred to and produced by the witness, headed S-22.

2219 (The statement referred to was thereupon marked "Defe ants' Exhibit (Spence) No. 82, April 22, 1915", and will found in the volume of defendants' exhibits.)

By Mr. BLAIR:

Q. The statement just referred to embraced Middle West territo Have you a similar statement in regard to Atlantic seaboard ter tory?

A. I have.

Mr. BLAIR. Counsel for the defendants puts in evidence the sta ment just produced, headed S-30, being a similar comparison of sim lar tonnage upon Atlantic seaboard territory.

(The statement referred to was thereupon marked "Defendan Exhibit (Spence) No. 83, April 22, 1915", and will be found in t volume of defendants' exhibits.)

By Mr. BLAIR:

Q. Mr. Spence, is there much unrouted traffic nowadays? I me is there any considerable quantity of traffic which a carrier recei without routing directions from the shipper?

A. There is no appreciable amount of such traffic now. T

2220 shipper nearly always exercises his prerogative to designate routing.

Q. Take the westbound traffic from the Atlantic seaboard whi the Sunset-Gulf receives, of course, at New York. How much of th is unrouted?

A. There can not be said to be any of it that is unrouted, becau the delivery of the freight by the shipper to the steamship line p of the Southern Pacific Company makes his intention obvious.

Q. You could not carry it but one way when it is delivered to yo

A. No.

Q. What about the eastbound traffic which the Sunset Route g for transportation to the Atlantic seaboard territory?

A. There is very little of it that is not routed by the shipper.

Q. Do other lines have access to points exclusively on the South Pacific lines in California?

A. Yes; all transcontinental lines have access to the business to a from all Southern Pacific territory.

Q. Does the Southern Pacific control the routing of traffic ori nating at such places exclusively on its line?

2221 A. It does not.

(Whereupon, at 12.30 o'clock p. m., a recess was taken un 2 o'clock p. m.)

222 AFTER RECESS.

LEWIS J. SPENCE, the witness under examination at the taking of ecess, resumed the stand and testified further as follows:

Direct examination (continued) by Mr. BLAIR:

Q. Mr. Spence, referring again to the steamships operated through he Panama Canal, and to this map offered in evidence showing those operation October 1, 1914, do you remember how many in number hese steamships were?

A. There were forty-nine, on the date of the map.

Q. What was their approximate capacity?

A. Approximately 400,000 tons.

Q. Have any additions been made to the service since that map was repared? I think you stated them yesterday?

A. Yes; the Red Star Line has put on a regular service with the teamers Finland and Kroonland.

Q. What does this make the steamship facilities available through he Panama Canal amount to, in tons per annum, in each direction?

223 A. Considerably more than 1,000,000 tons per annum in each direction.

Q. Do you know the number of tons of transcontinental traffic arried through the Panama Canal by steamships between eastern oints in the United States and California in the months of September, October, November, and December, 1914?

A. 369,199 tons.

Q. That is, between Atlantic seaboard territory and California?

A. And California ports.

Mr. MCCLENNEN. In what period?

The WITNESS. During the last four months of 1914.

By Mr. BLAIR:

Q. How did sailings and service in the Panama Canal compare ith those of the Tehuantepec route when that was in operation?

A. The sailings of the American-Hawaiian Line of the Tehuantepec route were from five to seven days apart. The time in transit as from twenty-six to thirty days, and the service involved two ransfers, one on each side of the Isthmus. The average sailings between New York and California via the canal at the present time are about every other day. The average time is about twenty-

224 two days, and the freight is handled through without transfer.

Q. And all these water lines compete directly and successfully for traffic in New Orleans and central California?

A. They do.

Q. And in what part of Atlantic seaboard territory?

A. The entire Atlantic seaboard territory.

Q. How was the Sunset-Gulf route affected by the inaugura of the service through the isthmus of Tehuantepec?

A. When the service was inaugurated by the Tehuantepec ro it reduced the time which had previously been by the Americ Hawaiian Line through the Straits of Magellan from sixty to twe six or thirty days and drew a very considerable volume of tra from the Sunset Route.

Q. Was the business of all-rail lines as much affected as was t business of the Sunset Route?

A. No; they were not as much affected, because the Tehuantepec capable of handling the peculiar character of traffic that the Sun Route is capable of handling.

Q. Has it competed with the Sunset-Gulf route at its strong point, the port of New York. Is that right?

A. That is right; yes, the port of New York.

2225 Q. Is the effect of numerous steamship lines through t Panama Canal confined to the port of New York? I beli I have asked you that before.

A. Yes, sir. The rates are so low to and from New York C that by the addition of the full local from or to any point in Atla seaboard territory the aggregate cost of transportation is less th by the transcontinental line.

Q. Are the steamships through the Panama Canal physically a to carry all the kinds of traffic that the Sunset-Gulf route is capa of carrying?

A. Everything.

Q. And the kind of traffic which the Sunset-Gulf route is not phy ically capable of carrying I suppose the steamships are not phy cally capable of carrying?

A. No; they have made an effort to carry a little perish freight, but have not been successful so far.

Q. Please state what are the future prospects in respect to t traffic between California and Atlantic seaboard territory wh both the Sunset-Gulf route and the steamships through the Pan Canal are able to carry.

A. The steamship lines through the Panama Canal have alre established very low rates; rates so low that the all-rail lines finding it impossible to meet them.

2226 Q. Why?

A. Because the eastern lines will not join in the nece through rate.

Q. By "eastern lines" you mean what lines?

A. East of Chicago and the Mississippi River, especially. Sunset Route (the Southern Pacific Company) has made appli

o the Interstate Commerce Commission for authority to make east-ound rates, which application was granted this week between the California ports and New York, to approximately meet the competi-ion through the canal.

Q. And the all-rail lines, as you have said——

A. The all-rail lines have not participated in the application and re unable to do so for the reasons stated.

Q. Are the western parts of the all-rail lines willing and the east-rn parts not willing?

A. Yes; the western lines would be glad to handle the traffic.

Q. How about the Santa Fe, with its mixed rail and water lines?

A. The Santa Fe, in connection with the Mallory Line, expects to establish the same rates as the Sunset Route.

2227 Q. So that, then, as to all the traffic of the Sunset-Gulf route which it is physically able to carry between California and the Atlantic seaboard territory it is in competition with the Pacific Mail steamships?

A. The steamships through the Panama Canal.

Q. Yes; I mean the steamships through the Panama Canal; and the prospects are that it will be alone in the fight in respect to that traffic with the water carriers on that side?

A. That the Sunset-Gulf route and the Mallory route will be in the contest with the steamships through the Panama Canal and for the major part of the traffic the all-rail lines will not be able to com-pete.

Q. Then the all-rail lines, including the Ogden route, will be in the business to the extent of striving for that traffic which you have described, which mixed rail and water lines can not engage in?

A. Yes; competition for that traffic will be between the several all-rail lines, the Ogden route, and the Santa Fe and others.

Q. And the competition for this transcontinental traffic which the Sunset-Gulf route is capable of carrying, that competition will be between the Sunset-Gulf route, the Santa Fe-Mallory Line,

2228 and the water carriers through the Panama Canal?

A. That is right.

Q. What effect in respect to the rate upon that traffic has the coming into existence of the water carriers through the Panama Canal had?

A. It has radically reduced it.

Q. Which lines are the dominant rate-making factors in respect to all that traffic which the Sunset-Gulf route is capable of carrying?

A. The steamship lines through the Panama Canal.

Q. And those carriers now dominate the rate situation in respect to such traffic between California and the Atlantic seaboard terri-

A. Yes.

Q. What effect, in your opinion, upon the rates would result fr the separation of the Central Pacific lines from the Southern P cific system; first, as to transcontinental rates in general, and t I will ask you about rates between California and Atlantic seabo territory especially?

A. Owing to the petitions which the carriers filed with the Int state Commerce Commission after the amendment of the law
2229 1910 for the privilege of protecting and continuing thro rates to California terminals, lower than rates to intermedi points, the transcontinental rates have been under the active a continuous review of the Interstate Commerce Commission for s eral years. They have not been found higher than reasonable. fact, the major part of them have been found to be subnormal ra less than reasonable, to such an extent that the commission has thorized a waiver of the long and short haul clause and the maint nance of higher rates for less service to intermediate points.

Q. That answer would apply as to the prospect of any fut reduction of transcontinental rates?

A. Yes.

Q. What I am asking is: What, in your opinion, would be t effect of the separation of the Central Pacific lines from the South Pacific system in general upon transcontinental rates?

A. My answer is that the same competitive forces that have c ated those rates would be still operative, and the effect would neither to advance nor to reduce them.

Q. What about rates between California and Atlantic seaboard t ritory? Into what two classes would you divide that tra
2230 with reference to the ability of the Sunset-Gulf route to t part in it?

A. First, that class of traffic which neither the Sunset-Gulf ro nor the Mallory Line nor the canal steamship lines are physic able to take.

Q. That, I understand, is the perishable freight?

A. The fruit and bulk freight; all kinds of delicate freight freight which is insufficiently packed to bear handling.

Q. As to such traffic, what effect upon rates would the separa of the Central Pacific lines from the Southern Pacific have?

A. I do not think it would have any.

Q. The Sunset-Gulf route and the Central Pacific do not com for that traffic, do they?

A. No, sir.

Q. As to the remainder of the traffic; that is, such traffic as Sunset-Gulf route and the Santa Fe-Mallory Line and the w carriers through the Panama Canal can compete for, what e

ould the separation of the Central Pacific from the Southern Pacific have upon rates for that traffic?

A. It would have no effect whatever, for the reason
231 that the contest for that traffic will be between the canal steamship lines and the Sunset-Gulf line and the Mallory Line-Santa Fe route.

Q. As I understand it, the water carriers through the Panama Canal have already reduced rates on that traffic, so that the all-rail lines are prospectively out of that business?

A. On the major part of it the rates have already been reduced.

Q. What will be the effect, in your opinion, of the separation of the Central Pacific from the Southern Pacific system upon rates on the Pacific coast, say from Oregon and north thereof, to El Paso on the south and Ogden on the east? That is, comparatively speaking, the local rates.

A. The separation would have a tendency to increase those rates.

Q. Why?

A. By creating a two-line haul or a three-line haul where a one-line haul has previously existed.

Q. What would be the effect, in your opinion, upon the service of the separation of the Central Pacific lines from the Southern
232 Pacific system? First, consider the lines via Ogden and via El Paso.

A. The effect would be to impair the service by both routes, because of the interchangeable way in which the lines are used.

Q. That is, both the lines standing in the name of the Central Pacific and the other lines of the system participate in both of those through routes and add to their efficiency?

A. They do.

Q. Do you know of any compensating advantages to the public likely to result from the separation?

A. I am not able to conceive of any compensating advantages to the public.

Q. Has the inclusion of the Central Pacific lines in the Southern Pacific system closed any alternative or competitive routes to the public?

A. No.

Q. I believe you have already stated that the ownership of the Central Pacific by the Southern Pacific has not prevented the existence of competition between the Ogden route and the El Paso route.

A. It has not.

Q. You said that yesterday?

233 A. Yes, sir.

Q. Has such ownership created the power to prevent such competition?

A. No; it has not.

Q. Has such ownership created an interest or inducement on t part of the Southern Pacific to impair the service on the Cen Pacific part of the Ogden route?

A. It has not.

Q. Have you anything to add to the reasons you gave for y answer yesterday or to-day?

A. No; I think I gave the reasons in full.

Q. What is the value to the Southern Pacific Company of t inclusion in its system of the Central Pacific lines?

A. The lines standing in the name of the Central Pacific ar necessary complement to the other lines embraced in the South Pacific system. The two sets of lines developed as one system, a their separation would impair the efficiency of both.

The joint operation of the two lines enables the Southern Paci to participate in a very substantial volume of traffic which it wou not be able to successfully secure by any other route. It en
2234 bles it to participate in a large traffic for which the Sunse Gulf route is physically unable to complete.

Q. Is it usual or unusual for a railroad system of this country include within its system lines which form part of alternate a competing routes of traffic?

A. It is quite usual.

Q. Let us take, for example, the different systems of railroad whi participate in the transportation of traffic across this continent—th very transcontinental traffic we have been talking about; do any o these systems include within themselves different lines which for parts of alternate competing routes for transcontinental traffic?

A. Quite a number of them.

Q. Will you give some illustrative examples?

A. The Chicago, Milwaukee & St. Paul Railway operates its ow line from Chicago via St. Paul to Seattle.

Its line from Chicago to Omaha, in connection with the Unio Pacific system between Omaha and Seattle, makes an alternate com peting route.

Q. Of those two competing routes, the Chicago, Milwaukee & S Paul owns all of one and what proportion of the other?

A. Nearly 500 miles.

2235 Q. Out of approximately a total of how much?

A. 2,300 miles.

Q. Have you prepared a map which graphically shows what you have just stated in regard to the Chicago, Milwaukee & St. Paul?

A. I have.

Q. Will you produce it?

A. Here it is.

Q. Is that map correct?

A. It is.

Mr. BLAIR. Counsel for defendants put in evidence the map just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 84, April 22, 1915.")

By Mr. BLAIR:

Q. Proceed, Mr. Spence.

A. The Union Pacific has its own system of lines from Omaha and from Kansas City on the east to Portland, Oregon, and its own steamship line from Portland to San Francisco. It also has a line from Omaha and one from Kansas City via Salt Lake in connection with the San Pedro, Los Angeles & Salt Lake Railroad, of
2236 which it owns a half interest, and its own steamship line between Los Angeles and San Francisco.

Its lines from Omaha and from Kansas City on the east to Ogden in connection with the Southern Pacific line from Ogden to Sacramento, Oakland, and San Francisco form an alternate competing route.

On the east these Union Pacific lines join, at Council Bluffs, with the Chicago & North Western, among other lines, between Council Bluffs and Chicago; and the Pennsylvania lines, among other lines, between Chicago and the Atlantic seaboard.

The Kansas City line of the Union Pacific connects at Kansas City with the Chicago & Alton to St. Louis, and thence via the Baltimore & Ohio system to Atlantic seaboard, among others.

The Council Bluffs line connects with the Wabash from Council Bluffs to St. Louis, and the Baltimore & Ohio east thereof.

The Kansas City line connects with the Rock Island from Kansas City to Chicago, and thence via Pennsylvania lines to the Atlantic seaboard territory.

Mr. BLAIR. Counsel for defendants put in evidence the map just referred to by the witness.

2237 (The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 85, April 22, 1915.")

By Mr. BLAIR:

Q. In all these maps you have not attempted to put in branches and feeders and other parts of this system of lines to which the map refers that do not figure in the alternate routes?

A. I have not.

Q. Now, proceed.

A. The Missouri Pacific system, consisting of the Missouri Pacific, Denver & Rio Grande, and Western Pacific, operates a line from St. [illegible] to Sacramento, Stockton, Oakland, and San Francisco; a sepa-

rate line from St. Louis to Texarkana, joining with an affiliated line the Texas & Pacific, between Texarkana and El Paso, connecting with the Southern Pacific west of El Paso, forms an alternative competitive through route.

Q. Of this southern line, what proportion do they own or have a part of their system?

A. The affiliated lines represent fully one-half of it.

Q. In all these maps you represent the system which you are referring to in green color, and the connecting lines in

2238 yellow?

A. Yes.

Mr. BLAIR. Counsel for defendants put in evidence the map referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 86, April 22, 1915.")

By Mr. BLAIR:

Q. Proceed.

A. The Santa Fe System operates its own line between Chicago and Stockton, Oakland, and San Francisco, California. Its line from Chicago, via Kansas City, to Pueblo, Colorado, in connection with the Denver & Rio Grande, thence to Salt Lake City, and Western Pacific thence to San Francisco, forms an alternate competitive through route.

The Santa Fe system, besides its line from San Francisco to Chicago, operates a line via Texaco to Galveston, Texas, which, in connection with the Mallory Steamship Line, forms an alternative route between California and Atlantic seaboard territory, the line between San Francisco and Chicago joining with the Erie Railroad between Chicago and New York.

Q. Are these alternate routes which you refer to, say, of the

2239 Santa Fe, mere paper routes, or does a substantial volume of traffic pass over both of the alternative routes?

A. They are in active competition and carry a substantial volume of the traffic.

Q. Is that true of the Missouri Pacific system that you refer to?

A. Yes.

Q. And what was the first one you referred to?

A. The Chicago, Milwaukee & St. Paul and the Union Pacific.

Q. And is it true of them?

A. Yes.

Mr. BLAIR. Counsel for the defendants put in evidence the map last referred to by the witness, of the Sante Fe system.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 87, April 22, 1915.")

By Mr. BLAIR:

Q. The Mallory Line, as I understand, is closely affiliated with the Santa Fe and operates with it?

A. Preferentially.

Q. And does a large business?

A. And does a considerable transcontinental business.

2240 Q. Proceed.

A. The Great Northern Railway operates a line from Seattle to Superior, Wisconsin, and the Twin Cities, Minneapolis and St. Paul, connecting at Superior with the New York Central lake and rail lines to New York, and connecting at St. Paul with the Burlington route and the Pennsylvania lines to New York.

The Great Northern, jointly with the Northern Pacific, owns the Spokane, Portland & Seattle Railway, between Astoria, Portland, and Spokane, which, in connection with its Great Northern lines from Spokane eastward, forms a through route from Portland to the Atlantic seaboard by the connections that have been enumerated.

The Great Northern, by the routes described from Seattle and Astoria and Portland, operates a line to Billings, Montana, where it connects with the Burlington route, running via Omaha to Chicago, and via Kansas City to St. Louis, connecting at Chicago with the Pennsylvania lines to the Atlantic seaboard and at St. Louis with the Baltimore & Ohio system to the Atlantic seaboard.

Q. Those, also, are actual routes, over both of which, or over all of which, a substantial volume of traffic moves?

2241 A. Yes.

Mr. BLAIR. Counsel for the defendants puts in evidence the map just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 88, April 22, 1915.")

By Mr. BLAIR:

Q. Suppose you give us some examples from the Western Trunk Line group.

A. The Chicago & North Western operates a line from Chicago to Ashland, Wisconsin, which joins with the Northern Pacific in one through route between Chicago and Portland, Tacoma, and Seattle.

The Chicago & North Western operates a separate line between Chicago and St. Paul, which, in connection with the Great Northern Railway, forms an alternate competing route between Chicago and Puget Sound.

The Chicago & North Western operates a third line, between Chicago and Council Bluffs, in connection with the Union Pacific system, forming an alternate competing through route between Chicago and Puget Sound.

Q. You have likewise prepared a map of the system which y
have just described?

2242 A. I have.

Mr. BLAIR. Counsel for defendants puts in evidence the m
just referred to by the witness.

(The map referred to was thereupon marked "Defendants' E
hibit (Spence) No. 89, April 22, 1915.")

By Mr. BLAIR:

Q. All three of these alternate routes carry a considerable vol
of traffic?

A. They do.

Q. In competition with each other?

A. Yes.

Q. Proceed.

A. The Rock Island lines extend from Chicago to Council Bl
and in connection with the Union Pacific and Southern Pacific li
form one route between Chicago and California.

A line from Chicago via Kansas City to Pueblo, Colorado, c
nects with the Denver & Rio Grande, which connects with the We
ern Pacific and forms an alternative route.

A line from Chicago via Kansas City to Santa Rosa, New Mexi
in connection with an affiliated line, the El Paso & Southweste
between Santa Rosa and El Paso, and the Southern Pac

2243 west thereof, forms an alternate competing line.

A line from St. Louis via——

Q. When you say "a line from St. Louis" and "a line from Ch
cago" you mean a Chicago, Rock Island & Pacific line?

A. Yes; a Rock Island line from St. Louis to Denver, in conn
tion with the Union Pacific and Southern Pacific to Pueblo, in c
nection with the Denver & Rio Grande and Western Pacific, and
Santa Rosa, New Mexico, in connection with the El Paso & Sou
western and Southern Pacific, form also competing routes betw
St. Louis and California.

A Rock Island line from Memphis to Santa Rosa, in connect
with the El Paso & Southwestern to El Paso and the Santa Fe
yond forms an alternate route in transcontinental business, b
joined on the east by the Southern Railway, the Baltimore & O
Philadelphia & Reading, and New Jersey Central to New York.

A line at St. Louis connecting with the Pennsylvania lines betw
Chicago and the Atlantic seaboard.

A line at Chicago connecting with the New York Central lines
tween Chicago and the Atlantic seaboard.

Q. These lines to which you refer have been delineated on
map—the map which you now produce?

244 A. Yes.

Mr. BLAIR. Counsel for the defendants put in evidence the map just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 90, April 22, 1915.")

By Mr. BLAIR:

Q. Proceed.

A. The Chicago, Burlington & Quincy Railway, known as the Burlington Route, operates a line between Chicago and St. Paul in connection with the Great Northern Railway to Portland, Tacoma, and Seattle.

The Burlington Route operates another line from Chicago to Billings, Montana, in connection with the Northern Pacific Railway; thence to Puget Sound, which forms an alternate competing route.

The Burlington operates a line from St. Louis to Denver in connection with the Union Pacific and Southern Pacific to California, and the Burlington operates a separate line from St. Louis to Kansas City in connection with the Missouri Pacific, Denver & Rio Grande, and Western Pacific, forming an alternate competing route between St. Louis and California.

Q. And all those routes carry a substantial volume of

245 traffic?

A. They do.

Q. In competition with each other?

A. Yes.

Mr. BLAIR. Counsel for the defendants put in evidence the map just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 91, April 22, 1915.")

By Mr. BLAIR:

Q. Give us some samples, Mr. Spence, from the lines in Trunk Line territory, the eastern territory.

A. The Pennsylvania Lines operate from New York to Chicago and there form connection with the Santa Fe system between Chicago and San Francisco.

The Pennsylvania Lines operate between New York and St. Louis, and there form connection with the Missouri Pacific, Denver & Rio Grande, and Western Pacific to San Francisco, forming alternate competing lines.

Mr. BLAIR. Counsel for the defendants put in evidence the map showing the lines just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 92, April 22, 1915.")

2246 By Mr. BLAIR:

Q. By the way, Mr. Spence, if you were to take the Pennsylvania lines from New York, say, to Chicago, and the Sunset-Gulf route from New York to San Francisco, would you not have an exact reproduction on the east of the Central Pacific and the Sunset Gulf route on the west?

A. Yes; especially from Pittsburgh westward; business from Pittsburgh.

Q. Except that the line from Chicago to New York is longer than the line from San Francisco to Ogden?

A. Yes.

Q. Have you any other examples?

A. The Baltimore & Ohio system operates from the Atlantic seaboard to Chicago, joining with the Illinois Central between Chicago and Council Bluffs, and the Union Pacific and Southern Pacific west thereof via Ogden in one through route between the Atlantic seaboard and San Francisco.

The Baltimore & Ohio system operates a line from the Atlantic seaboard to St. Louis, which, in connection with the Missouri Pacific, Denver & Rio Grande, and Western Pacific to San Fran-

2247 cisco, forms an alternate route in the business between the Atlantic seaboard and California.

Mr. BLAIR. Counsel for the defendants put in evidence the map showing the lines just referred to by the witness.

(The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 93, April 22, 1915.")

By Mr. BLAIR:

Q. Proceed, Mr. Spence.

A. The New York Central operates a line from New York to Chicago, which, in connection with the Chicago & North Western, Union Pacific, and San Pedro, Los Angeles & Salt Lake Railroad, forms a through route between New York and Los Angeles.

The New York Central operates another line from New York to St. Louis, which, in connection with the Rock Island, El Paso & Southwestern, and Southern Pacific, forms an alternate competitive route between New York and Los Angeles.

Q. And it is true of the last system of lines, as it was true of the others, that they are not paper lines, but actually handle the business?

A. They actively engage in the business.

Mr. BLAIR. Counsel for the defendants put in evidence the large map referred to by the witness.

2248 (The map referred to was thereupon marked "Defendants' Exhibit (Spence) No. 94, April 22, 1915.")

By Mr. BLAIR:

Q. Is this inclusion in one system of alternate or competing routes eculiar to the lines engaged in transcontinental business?

A. It is not. It is quite common to the large systems of the ountry.

Q. You have stated that you wanted to make one correction in your stimony this morning, Mr. Spence.

A. In connection with my statement with reference to passenger ain service in 1885, 1900, and 1914, in response to a question of ounsel, I stated that in 1885 there was through train service from maha to San Francisco, although not from Chicago to San Fran- sco. I should have stated that there was no through train service ither from Chicago to San Francisco or from Omaha to San Fran- sco.

Q. In what year?

A. In 1885; December, 1885. Close connections were made both t Omaha and at Ogden, and every one of the schedules adjusted to make close connection.

249 Q. Was it customary at that stage of railroad development for through trains to be run through junction points?

A. It was not common to operate through equipment, as it is -day.

Q. That kind of through service was up to the standard of through rvice as it generally existed?

A. Yes.

Q. That route has kept up with the procession, has it not, as the rough traffic developed?

A. Yes, sir. As I have shown, two through daily trains in De- mber, 1900, and three through daily trains in December, 1914, were n.

Q. Do you recall the exact date when through service in the way of nbroken trains first passed through?

A. I do not.

Mr. BLAIR. The witness is yours.

Cross-examination by Mr. MCCLENNEN:

Q. Mr. Spence, you recall the request which was made last July y petitioner's counsel for certain statistics from the railroad?

A. Yes.

250 Q. I refer to the request which eventually resulted in your furnishing petitioner's Exhibits 43 to 58, and you so under- and me?

A. Yes.

Q. Do you recall that that request defined the eastern territories in o sections: One, the Atlantic seaboard territory, and the other the

territory west of the Atlantic seaboard territory and east of the Mi
souri River, and north of a line?

A. Yes.

Q. Was the question of getting up the statistics from your reco
with reference to those territories taken up with you?

A. Yes.

Q. Were you the author of the suggestion that instead of that li
territory which I have last defined, there should be substituted wi
you have called the Middle West territory?

A. Yes.

Q. At the time the requests were made, were your statistics alre
compiled for that Middle West territory?

A. No.

2251 Q. In order to get the various statistics for that territory
became necessary to refer to your original details of shipme
from and to that territory?

A. Yes.

Q. What was the reason which influenced you to suggest the Mid
West territory, as you have defined it on the exhibits, for the terri
defined in the request?

A. I had two reasons. The first reason was because it was my c
ception, as the result of some experience, of what I thought the p
tioner's counsel desired. In view of the extent to which the requ
were confined to traffic via El Paso, it seemed to me that the R
Island, operating directly through El Paso, ought to be included
the traffic, and that petitioner's counsel wanted to include it, in a
ing "via El Paso."

The second reason was that it conformed to my proposed prepa
tion of statistics to show exactly what petitioner's counsel appare
was seeking, the relation of traffic via El Paso to that via Ogden.

Q. Do these statistics which have been produced with reference
that Middle West territory include or exclude traffic taken
2252 or laid down by the Rock Island route between the north
boundary of Oklahoma, the point selected [indicating on m
and Omaha?

A. They include that.

Q. They include that. The territory selected by you as Mid
West territory included the traffic taken up or laid down in the wh
of Nebraska and Wyoming and a large part of Kansas?

A. No; it included all traffic taken up or laid down on the R
Island line between the southern boundary of Kansas and St. P

Q. That is, it included in the El Paso tonnage that which
have just mentioned?

A. Yes.

Q. By the selection of this Middle West territory there was included in the Ogden figures the traffic taken up or laid down in Wyoming and Nebraska and the northwestern part of Kansas?

A. The Ogden figures include exactly the same territory as the El Paso figures in traffic.

Q. Do you mean by that that they include that territory?

253 A. They include all traffic picked up or laid down by the Rock Island between the southern boundary of Kansas and St. Paul and east thereof.

Mr. BLAIR. Nothing west of it?

The WITNESS. No. The statistics of traffic via Ogden include the same originating and destinating territory as the traffic via El Paso.

By Mr. MCCLENNEN:

Q. Just what traffic west of the Missouri River is included in the Ogden figures as part of the Middle West territory, giving it not by comparison with El Paso, but absolutely?

A. As far west as the Rock Island line, from the southern boundary of Kansas to St. Paul, inclusive.

Q. That is, it includes, then, nothing in Nebraska?

A. I will have to look at the Rock Island lines. [After examining memoranda.] The exhibits define in greater detail the points on the Rock Island through which the line is drawn. It embraces all points in and east of the line of the Chicago, Rock Island & Pacific, extending from the Kansas-Oklahoma State line via McFarland and Belleville, Kansas, and Des Moines, Iowa, to St. Paul, Minnesota.

254 Q. Then is it correct to say that in Middle West territory, referring now to Ogden figures, is included nothing west of the Missouri River except that freight which is picked up and laid down on the Rock Island line?

A. Yes; between that and the Missouri River.

Q. Or east thereof?

A. Yes.

Q. That territory which you selected and defined as Middle West territory was, to your mind, the competitive territory as between the Ogden and El Paso gateways, so far as the eastern end was concerned, and not considering Atlantic seaboard territory now?

A. It embraced the territory from and to which traffic could be reached by Ogden or by El Paso.

Q. And in that sense, competitive territory?

A. Yes.

Q. The Atlantic seaboard territory, as an eastern origin, was obviously a competitive territory as between the Ogden and the El Paso routes?

A. The Atlantic seaboard territory was competitive between the Ogden and the Sunset routes.

Q. And it was also competitive between the Ogden route and the El Paso route by the Sunset line?

2255 A. An alternate route existed via El Paso by connection with eastern lines.

Q. And in that way that territory was a competitive territory as between the two gateways?

A. If that is the result of that statement.

Q. It is the result of that statement, is it not?

A. The result of that statement is that neither the line west of El Paso nor the line west of Ogden can alone compete for that traffic. The line west of Ogden, in connection with the several lines east of Ogden, compete for that traffic, and the line west of El Paso, in connection with the several lines east thereof, also compete for that traffic.

Q. Take, for example, the line made up of the Central Pacific, Union Pacific, the Chicago & North Western and the New York Central, and the lines made up of the Southern Pacific to El Paso, the Rock Island—using that to include the Rock Island and El Paso & Southwestern to Chicago, and the New York Central to New York—those are competitive routes for the entire Atlantic seaboard territory?

A. They are. They are engaging in the traffic.

Q. And are competitive in that sense?

2256 A. Well, it depends on what you call a real competitor.

Q. They are two practicable, and not merely theoretical routes between those two territories?

A. Yes.

Q. And in that sense—in the actual operation—are competitive?

A. They may be said to be competitors in a degree; that is, distinguishing between successful and unsuccessful competitors. One is a long route and the other is a short one.

Q. Would you call the competition between those two routes active?

A. Yes.

Q. And substantial?

A. Yes.

Q. And to some extent successful, so far as the Rock Island is concerned?

A. Successful in a degree, as the statistics show.

Q. And it is a substantial degree?

A. Well, by percentages it is substantial, but small.

Q. The El Paso route, made up of the Southern Pacific and the Rock Island, is a substantial and large competitor for Middle West business with California against the Ogden route?

2257

A. It has a substantial and large business between the Middle West and southern California.

Q. Do you mean by that to say that it is not large for central and northern California?

A. Judged by percentages, as shown by the statistics, it is not large.

Q. On Exhibit No. 62 you have compared the Ogden tonnage for Atlantic seaboard with all other territory, showing eastbound, for Atlantic seaboard 20.6 per cent, and for other territory 79.4 per cent. The 100 per cent, according to my understanding, includes all Southern Pacific movements, wherever originating, which pass through Ogden?

A. Yes.

Q. What is comprised in "other territories"?

A. All territories except Atlantic seaboard territory.

Q. That includes all that you have stated as Middle West territory, and some besides?

A. Yes.

Q. The figure against "Other territories" is 592,588 tons. Of that, am I right that 368,975 tons go to Middle West territory?

A. That is correct.

2258 Q. Have you any statistical information as to where the remaining 223,000, approximately, tons goes.

A. I have no statistical information, but I can tell you where it goes.

Q. What is the general distribution?

A. All over the territory west of the Rock Island, to and from all points on the Southern Pacific along the line of Texas and Louisiana; everything south of the northern boundary of Arkansas and south of the Ohio River.

Q. Is the 97th meridian of longitude the recognized line in defining what is and what is not transcontinental freight?

A. The Colorado gateway is Denver, Pueblo, Colorado Springs, and Trinidad. Then it runs down to El Paso and crosses the Santa Fe at Albuquerque.

Q. That is more nearly the 105th meridian, is it not?

A. I do not know. That is the boundary.

Q. That 223,000 tons has such a delivery that it is not, in a practical sense, competitive through El Paso. Am I right?

A. No; it is not, in a practical sense. It is possible to make

2259 routes by which through rates apply; for example, into this territory west of the Rock Island, business can be handled via Deming and El Paso over the Santa Fe or by the Rock Island and Fort Worth & Denver City to Denver.

Q. Does a substantial amount move that way?

A. The southern California movement moves quite a little the way; not a great deal from San Francisco.

Q. That is, roughly speaking, is it not thirty per cent of the total eastbound Southern Pacific traffic?

A. Via Ogden?

Q. Via Ogden; yes.

A. Approximately.

Q. Assuming, for the time being, that that thirty per cent should be said not to go into territory which, practically speaking, is competitive, then the total Southern Pacific tonnage going through Ogden is, to the extent of seventy per cent of it, tonnage which goes into territory as to which the El Paso gateway is a competitive gateway?

A. That share of the business routed via Ogden goes to points that it is practicable to reach by El Paso.

Q. And in that sense seventy per cent of the Southern Pacific eastbound Ogden tonnage goes into territory as to which the El Paso gateway is competitive?

2260 A. The gateway is open and is in position to take the traffic.

Q. And in that sense it is competitive?

A. It is competitive to the extent of its ability.

Q. And for all of that territory where that seventy per cent of freight goes there are joint through rates published?

A. Yes.

Q. Both ways?

A. Yes.

Q. Referring to the same exhibit, No. 62 of the defendants, and the westbound tonnage, your figure for "other territories" is 549,009 tons. Is it true that 259,648 of those tons are from what you have defined as "Middle West territory"?

A. 259,648 tons?

Q. Yes.

A. Yes.

Q. This leaves 289,361 tons moved through Ogden westward to be accounted for from territory other than Atlantic seaboard or Middle West territory?

A. 289,361 tons.

2261 Q. And that is approximately forty-seven per cent of the Southern Pacific's total westbound Ogden tonnage?

A. No.

Q. Is not that right?

A. This, other than Middle West, is 289,361 tons?

Q. Yes.

A. With a total of 549,009?

Q. No; the total was 617,925.

A. Oh, yes. It is somewhat less than forty-seven per cent.

Q. To make it perfectly clear, right at this point in the record, the tal of all westbound Ogden Southern Pacific tonnage is 617,925?

A. Yes.

Q. And it is that figure upon which you just based that forty-six lus per cent?

A. Yes.

Q. And the remaining fifty-three per cent of all the Southern Pacific Ogden westbound tonnage is from territories as to which the El Paso gateway is competitive with the Ogden gateway?

A. The El Paso gateway—the El Paso route—is engaged in competition as to all that territory.

Q. It appears from the figures which you have had prepared that e eastbound tonnage through El Paso from all points west of Ogden nd El Paso moved by the Southern Pacific is, to the Atlantic seaoard, 163,180 tons; to the Middle West territory, 271,897 tons. low much tonnage additional to those two figures is moved by the outhern Pacific eastward through El Paso?

A. I believe that is all the tonnage moved eastward through l Paso to those territories.

Q. I said to all territories.

A. You combined two statements; one to the Atlantic seaboard, d the other to the Middle West.

Q. What I mean to ask you, if I did not do so, is, What eastbound nnage is moved via the Southern Pacific through El Paso, in addion to these two items? Of course you understand that in all these estions I am referring to your year ending June 30, 1914.

A. Whatever eastbound tonnage had destination in territory her than Middle West, as described in one statement, or Atlantic aboard, as described in the other.

Q. Have you that figure?

A. I have not.

Q. Has it been made up, that you know of?

A. I think not.

Q. The two figures stated amount, you will observe, to 435,077 tons. n you, from your stock of general information, tell me anything out the number of tons moved by the Southern Pacific eastward rough El Paso during that period, additional to these figures?

A. I can not.

Q. Have you not any idea of your total annual eastbound El Paso vement?

A. No. I do not know of any such statistics that are kept.

Q. But have you not your total Southern Pacific annual eastbound vement through all gateways?

A. I do not think we have. I do not know of any such statistics.

Q. And have you no idea whatever of what the gross figure is?

A. No.

Q. As a practical matter, what are the territories, other th
2264 Atlantic seaboard and Middle West, through which the Sou
ern Pacific moves freight in essential quantities thro
El Paso eastward?

A. From northern and central California to the territory wh
I have described once before, I think, south of the northern bou
ary of Oklahoma and Arkansas.

Q. Is that a heavy tonnage?

A. Yes; there is a good deal of dried fruit, canned goods, a
wine. One of the largest wine destinations in the country is N
Orleans; all the consumption of California products down in th
country.

Q. The eastbound tonnage through El Paso moved by the So
ern Pacific in a year to territories other than the Middle West ter
tory, as defined, and the Atlantic seaboard territory, would undou
edly exceed 100,000 tons, would it not?

A. I really could not say. I have no idea.

Q. Could you say that it did not exceed 200,000 tons?

A. No.

Q. Is not this the kind of a matter that you have to deal with
the ordinary course of planning your business and method
2265 A. Yes; but not necessarily with the segregation of desti
tion territories that you are endeavoring to ascertain.

Q. The 435,077 tons eastbound through El Paso to Atlantic s
board territory and Middle West territory all go to the territory
to which the Ogden gateway is competitive?

A. Both routes are open to engage in that traffic.

Q. And in that sense the Ogden gateway is competitive for it?

A. If you please.

Q. Well, regardless of my pleasure, but simply as a fact.

A. As I said before, it is competitive in the degree that a w
line, a long line, can be competitive with a short line.

Q. To what do you refer as the weak long line?

A. Any line operating through a gateway of the southern lines

Q. From the schedules which you have produced it appears
the Southern Pacific El Paso westbound movement includes 10
tons from the Atlantic seaboard and 269,970 tons from the Mi
West territory, or a total of 375,778 tons. All of that El P
2266 Southern Pacific westbound movement is from territory
which the Ogden gateway is competitive, is it not?

A. No; it includes New Mexico and Arizona and points ea
Banning, California.

Q. I will ask to have the question read.

(The reporter read the question as above recorded.)

The WITNESS. I say no.

By Mr. McCLENNEN:

Q. The Atlantic seaboard territory, as a place of origin, is a territory as to which the Ogden gateway is reasonably and practically competitive for all California, Nevada, and southwestern Oregon destinations, is it not?

A. Nevada, California north of Mojave and Santa Barbara, and southwestern Oregon destinations.

Q. Prior to the opening of the San Pedro route, in 1905, did westbound traffic, to any extent, from Atlantic seaboard territory move through Ogden into southern California?

A. I think not.

Q. The opening of the San Pedro route has had no effect upon the comparative movement, then, into southern California as between Ogden and El Paso; is that right?

2267 A. Prior to the opening of the San Pedro route, of course the Union Pacific had no other route by which to send any southern California traffic that it might secure, nor had the Denver & Rio Grande, except the route via Ogden to Sacramento. Since the opening of the San Pedro route their entire strength has been thrown to the San Pedro line.

Q. Was the movement of the Union Pacific or the Denver & Rio Grande or other lines through Ogden to southern California before the opening of the San Pedro route substantial?

A. It was not large, because of the long haul; but to whatever extent the Union Pacific's influence could be exerted, either on the shipper or the consignee, or the Denver & Rio Grande's influence, or other connections, the business was influenced that way.

For example, take citrus fruit from southern California. Whatever they wished to start to markets up in Utah or Colorado, with possible reconsignment eventually, they sent up via Sacramento and Ogden. To-day they can send that traffic via the Salt Lake route. The building of the line changed those conditions.

Q. Would you call the movement through Ogden, influenced by the Union Pacific or the Missouri and allied lines, or otherwise,

2268 from Atlantic seaboard territory to southern California, before the opening of the San Pedro route, substantial or negligible?

A. I would not be able to deal with it in figures I do not think I ever saw any. At that time I probably would not see any.

Q. I do not mean to commit you at all to anything like exact figures, but was it worth talking about or was it trifling? Was it substantial or was it negligible?

A. The main part of the traffic to southern California moved by the Santa Fe and via the southern route. What share the Ogden route secured I really do not know.

Q. It was more or less negligible, was it not?

A. I could not say without the figures.

Q. What you have just said with reference to the Atlantic seaboard freight moving into southern California through Ogden would apply equally well, would it, to the Middle West freight moving into southern California through Ogden, or is there a distinction to be made?

A. No; I think the same general conditions prevail.

Q. I call your attention to defendants' Exhibit No. 77: The figures in the schedule against southern California mean that portion
2269 of southern California lying northwest of a line drawn across the State at Banning and southeast of a line drawn across the State from Santa Barbara through Mojave?

A. Yes; southern California as shown in the statement is as you have described it.

Q. The intention of those figures was to bring out, was it not, the portion of the El Paso and Ogden tonnage which originated or was destined in the portion of southern California which is within the range of the joint rates through Ogden, but beyond what, in your judgment, would move through Ogden. Is that correct?

A. Yes. They cover the territory that could only be reached by the Central Pacific through the use of the Southern Pacific rails.

Q. Well, was that the occasion for making that division?

A. The occasion for making the division was to lay the foundation for the elimination from the statistics of southern California and Oregon business, for which the Central Pacific is, under existing conditions, not a natural route.

Q. In choosing Mojave as the northern boundary of that territory rather than Goshen, you must have had in mind something
2270 other than the necessity of using the Central Pacific rails, did you not?

A. We had in mind the territory through which the connections of the Central Pacific east of Ogden solicit the traffic and route the traffic through Ogden and the Central Pacific.

Q. That was not, primarily, on account of the need of Southern Pacific rails to complete the haul, was it?

A. It was a combination of the two circumstances. We probably included the Central California business routed by the Southern Pacific very liberally. Part of that must be reached by Southern Pacific rails.

Q. Was not the existence of the Tehachapi Pass one of the things that play a part in selecting Mojave as the northern boundary for this particular compilation, rather than selecting Goshen?

A. No. The line was drawn just as I have told you the solicitation line was drawn, that the Southern Pacific solicitors of traffic from and to territory north of Mojave and Santa Barbara, picked up or laid down in the Middle West via the Ogden route, and the Union Pacific and Denver & Rio Grande, Chicago & North Western, Chicago, Milwaukee & St. Paul and other connections likewise
2271 solicit that traffic via that route. They solicit the traffic south of the Tehachapi Mountains via the Salt Lake route.

Q. That policy had no relation to the fact that Southern Pacific rails were needed particularly to reach below Mojave, did it?

A. No; because the policy of solicitation treats the Southern Pacific and Central Pacific rails as one system.

Q. The San Pedro route does not affect the situation appreciably north of Mojave, does it?

A. Not freight traffic.

Q. What was the occasion, on defendants' Exhibit No. 77, for setting out the Oregon east and west bound tonnage through the two gateways?

A. Substantially the same reasons as for eliminating southern California.

The Union Pacific and its connections solicit all of the Oregon traffic via Portland, and the Central Pacific has no connection east of Ogden with which to make it an effective route.

Q. Is this item on defendants' Exhibit No. 77 of Oregon 7,533 tons in part El Paso tonnage and in part Ogden tonange?

A. Yes.

2272 Q. So far as it is Ogden tonnage, does it pass through Roseville?

A. Yes.

Q. Do you know what portion of that 7,533 tons goes El Paso and what part Ogden?

A. No; because, as I stated, the Ogden tonnage is not representative, because the line was not open for a good part of the year.

Q. Then, for all practical purposes, the 7,533 is El Paso tonnage?

A. Except what moved through Ogden during the time it was open.

Q. A matter of fifteen days, was it?

A. Fifteen days.

Q. And the same is true of the 1,743 westbound?

A. Yes.

Q. That is substantially all El Paso tonnage?

A. Yes.

Q. Those two figures come from territory that, so far as physical conditions are concerned, is territory for which the Ogden gateway is competitive?

2273 A. The Ogden route is open to and from both of these territories, but is not effectively competitive.

Q. The Roseville gateway and the Ogden gateway are now open on all southwestern Oregon freight, are they not?

A. Yes.

Q. Why is Ogden, with that gateway open, not competitive with El Paso, either on an equal plane or a superior one, for all that southwestern Oregon tonnage?

A. Not competitive with El Paso?

Q. Yes.

A. What I intended to convey was that neither of them was effectively competitive. Eighty per cent of the Oregon traffic is moved by Portland.

Q. No part of the eighty per cent moved by Portland is in these figures on defendants' Exhibit No. 77?

A. No.

Q. On this Exhibit 77 these two figures, east and west bound from Ogden, did in fact move down through California over Southern Pacific and Central Pacific lines to El Paso?

A. Yes.

Q. With the Ogden gateway open, by the filing of the joint rates, the Roseville gateway open by the filing of the joint rates, the

2274 Ogden gateway was competitive for every pound of those two items, was it not?

A. It was, in so far as those items were competitive freight. The westbound item includes material and supplies for affiliated railroads of the Southern Pacific in Oregon, which was routed via El Paso or some gateway east thereof, to minimize the cost of transportation paid to foreign lines.

Q. Territorially, the gateway was competitive?

A. Yes.

Q. For all of those items?

A. Yes; the rates are now in effect. The Southern Pacific is responsible for having restored that competition. The gateway was closed.

Q. Did the Southern Pacific Company participate in the closing of that gateway?

A. The Southern Pacific Company did not have any power to resist it. It responded to "its master's voice."

Q. Do you recall that the only time heretofore in this record that expression "responded to its master's voice" was used was when Mr. Herrin used it?

A. I had not seen that in the record. It must be a good expression if Mr. Herrin used it.

2275 Q. That is, there was a coordination of thought between you two on that subject?

A. Naturally.

Q. It was the officers of the Southern Pacific Company, as officers of the Southern Pacific Company, that participated in closing that gateway?

A. By direction of a joint officer of the Union Pacific and Southern Pacific.

Q. That joint officer being then the president of the Southern Pacific Company?

A. Or the director of traffic.

Q. And the subordinates in the employ of the Southern Pacific Company obeyed the direction, because they recognized it as the direction of the superior Southern Pacific officer?

A. No; as the direction of the joint officer of the Union Pacific and Southern Pacific.

Q. Returning now from the little excursion on which you are responsible for inviting me: With the Roseville gateway open and the Ogden gateway open, on whomever may rest the praise or the blame for doing it, all of those items against Oregon on defendants' Exhibit No. 77 are items for which the Ogden gateway is competitive territorially?

A. Yes.

2276 Q. And in that respect they differ from the items against southern California on the same schedule?

A. No.

Q. Are those items on the same schedule against southern California items for which the Ogden gateway is competitive?

A. The Ogden gateway is open to this southern California business as it is open to the Oregon business.

Q. And practically competitive?

A. But not effectively.

Q. Practically but not effectively?

A. Yes.

Q. The exhibit of which we have just been speaking, defendants' Exhibit No. 77, had reference to Atlantic seaboard freight, you notice, either east or west. Exhibit No. 78 has reference to Middle West territory freight east or west, but is in other respects the same as Exhibit No. 77. That is correct, is it not?

A. Yes.

Q. And all that you have just said with reference to the Ogden gateway, as applied to Exhibit No. 77, applies likewise to the

2277 items of southern California and Oregon on Exhibit No. 79, does it not?

A. Yes; including my statement that the westbound includes a substantial amount of material for the company.

Q. Have any figures been collected of the affiliated companies' freight?

A. No.

Q. That explanation which you have made with reference to affiliated companies has practically no bearing on eastbound freight, has it?

A. No.

Q. How large an item is the westbound freight for affiliated companies?

A. I should say that that item consisted largely of that character of freight, the westbound item.

Q. That is, that Oregon freight?

A. Yes. We had the Portland, Eugene & Eastern Railroad under construction and electrification, and the Ogden route being closed sent it via El Paso.

Q. Did that railroad construction, in your estimate, probably include substantially all of the 10,716 westbound Oregon tons, practically all through El Paso and from the Middle West, and sub-

2278 substantially all of the 1,743 westbound tons, Oregon westbound tons, from the Atlantic seaboard?

A. It included substantially all the westbound tonnage from the Middle West, because it would be difficult to induce the shipper to send commercial freight via El Paso to Oregon from Chicago.

Q. All of that freight had to travel, in part, over the rails of the Central Pacific Railroad?

A. Yes.

Q. On defendants' Exhibit No. 79 you have, as moving from what amounts to Nevada and all of California north of the Mojave-Santa Barbara line to Middle West territory 331,218 tons, you observe?

A. Yes.

Q. On your schedule furnished the petitioner of the total movement from west of Ogden and El Paso to the Middle West, eastbound, through Ogden you have 368,975 tons, you observe?

A. Yes.

Q. Perhaps I was a little inaccurate in not calling your attention to this: Am I correct that that item of 331,218 does include any oriental freight that passed through California, through that gateway?

2279 A. Yes.

Q. Returning, then, to the question: What was the origin of the 37,757 tons which moved through Ogden to the Middle West,

ut did not come from northern and central California and Nevada nd east thereof to Ogden, or through that territory?

A. Oregon and southern California.

Q. None of it came from Oregon except such as moved in the ifteen days after the opening of the Roseville gateway, did it?

A. No.

Q. Substantially all of it originated in southern California south f the Mojave-Santa Barbara line?

A. Yes.

Q. And that amount is a little more than ten per cent of the total astbound movement to the Middle West through Ogden, as given in Exhibit No. 45–46?

A. The eastbound is a little more than ten per cent?

Q. No; the southern California-Oregon is a little more than ten per cent of the total northern and central and southern California nd Nevada origin?

A. 37,757 tons.

2980 Q. And that is ten per cent of the movement through Ogden—a little over ten per cent?

A. Yes.

Q. That ten per cent from southern California, through Ogden to the Middle West, was tonnage as to which the El Paso gateway was competitive?

A. Yes; but the reasons for its routing via Ogden, as I have stated, were climatic and commercial on the part of the shipper.

Q. With the climatic and commercial conditions, as they were, the Ogden gateway was competitive and successfully competitive as to that ten per cent with the El Paso gateway, was it not?

A. Yes. It owed its success to the difference in climate and commercial conditions.

Q. Those climatic and commercial conditions were those which would have led the traffic over the San Pedro road, preferably to the El Paso gateway, were they not?

A. Yes.

Q. What was the character of that ten per cent of the total going through Ogden which originated in southern California that led to its going by Ogden?

2981 A. Citrus fruit.

Q. As to citrus fruit in southern California, is the Ogden gateway competitive with the El Paso gateway for the Middle West territory and the Atlantic seaboard territory?

A. At a certain season of the year it is to a limited extent.

Q. During what season of the year?

A. The spring.

Q. Spring only?

A. Yes; it is in the spring that they send this fruit north for climatic reasons.

Q. How many months of the spring?

A. It is practically between seasons. When they reach the point where they have to ice it for shipment by either route, it does not cost them any more to ship it via El Paso than it does by Ogden. In the season when they can ship it under ventilation between the cold and the hot weather, they ship it via Ogden, owing to climatic conditions.

Q. In terms of months what would that be, having regard to the usual weather conditions?

A. April or May, I should think.

Q. A couple of months?

2282 A. Yes.

Q. If the citrus fruit traffic moving through Ogden to the Middle West during two months of the year was ten per cent of the total Ogden movement to the Middle West for the whole year, would that mean approximately that during those two months sixty per cent of the Ogden movement to the Middle West from the Southern Pacific was from southern California?

A. Oh, no.

Q. What would be the counteracting feature? If ten per cent for the whole year moved in two months through Ogden from southern California, why was it that it was not sixty per cent of the movement during those months?

A. Because of the absence of the movement during the remaining ten months.

Q. I do not quite follow you. Why would not the absence of the movement during the remaining ten months, the ten per cent moved during the year, rather suggest that sixty per cent of the movement during the two months was from southern California, to make up for the other ten months during which none moved?

A. Now I do not follow you.

2283 Q. What?

A. I do not follow you. You are some mathematician.

Q. Then I will have to start afresh, and see where we divide. It appears that of this class the total movement through Ogden was 368,975 tons. Would that come anywhere near moving equally over the different months?

A. No. That moves chiefly within a couple of months.

Q. Do you quite mean that? Observing the figure that I have called attention to, is not this southern California movement, the Ogden Middle West movement for the whole year, eastbound?

A. Well, that is a seasonal movement. Not only the southern California, but the northern California, the deciduous fruit, moves within short period.

Q. Taking 368,975 as the movement for the year of this kind through Ogden, what is a reasonable estimate of the total movement of this kind through Ogden in April and May, one-sixth of the year?

A. I could not tell you.

Q. Should you think that it would much exceed 40,000 tons?

A. Well, no.

Q. Should you think it would be as much as 100,000 tons?

A. I do not know.

Q. Mr. Spence, do you mean to say that you could not be of any assistance, from your general knowledge of the movement of traffic, as to whether upwards of a quarter of the annual movement through Ogden of this kind was in two months or not?

A. No; because the different kinds of traffic move at different times. Deciduous fruit dies not move in April and May at all.

Q. Do you think it at all probable that this total, ten per cent of this total Ogden movement to the Middle West, which came from southern California, moved in the two months, or in two months?

A. I think it moved within a short period. There are two reasons for sending the things by that route, and one is climatic and the other commercial. One is to send business up through certain markets at which the fruit may be stopped or may be permitted to go on to markets farther east.

Q. Apart from the southern California citrus fruit movement, strongest in April and May, what else, eastbound from California, is conspicuously heavy in April and May?

A. Nothing.

Q. Nothing? Is there much, if any, citrus fruit movement eastbound from California north of Tehachapi?

A. Oh, yes; several thousand cars a year.

Q. Several thousand cars a year. And would they move in April and May?

A. No; they move earlier.

Q. And for the converse reason they consider a part of them go via El Paso?

A. They move in season and according to the season.

Q. They would not move in April or May?

A. No; that movement is earlier than that.

Q. Then the only eastbound traffic of moment in this item through Ogden of 368,975 tons, which was conspicuously heavy in April and May, was this citrus fruit movement from southern California?

A. Oh, I could not say that.

Q. What else was there that would be conspicuously heavy?

A. The lumber and the dried fruit and canned goods move
2286 all the year round. The business that comes in from Asia moves all the year round. Everything moves all the year round except this green fruit.

Q. I say, anything that is conspicuously heavy in April and May.

A. Well, what I mean is that I am not able to say whether these other commodities move heavier in April and May than they do in any other months.

Q. There is nothing in your knowledge of the general situation to indicate that such is the fact?

A. No.

Q. If you take this citrus movement of something like 37,757 tons from the total, you observe that you have a little over 330,000 tons, or precisely 331,218 tons, as shown on your Exhibit No. 77?

A. 331,218 tons.

Q. That figure being reached after we have taken away from the total Ogden-Middle West-Eastern movement the citrus fruit movement from southern California, is there any reason that any of the balance of that 331,218 tons would be particularly excessive in April and May?

A. I have no reason to think that it would or that it would not. I really do not know.

2287 Q. If that movement were divided equally over the months you would have moving in two months 55,000 tons, would you not?

A. No; I would not say it would be that.

Q. 331,000 divided by six?

A. Oh, of this total of 331,218 tons?

Q. That is, after we have deducted the citrus fruit from the total, you have this 331,218 tons?

A. Yes.

Q. So that I say, if that moved equally, that would mean 55,203 tons within two months, would it not?

A. It would leave a difference of 55,203 tons, a substantial part of which moves in two months.

Q. If you assumed that there was, of all other classes than the citrus fruit, at least a pro rata share moving during those two months of the 55,203 plus the citrus fruit from southern California, you would have during those two months moving eastward to Middle West territory through Ogden 93,960 tons, would you not? There would be 55,203 tons plus 37,757 tons of citrus fruit, which gives 92,960.

Mr. BLAIR. Do you mean that moves in any one month?

Mr. McCLENNEN. In two months. The citrus fruit move-
288 ment of 37,757 tons would be forty per cent of the total move-
ment during the two months, would it not?

The WITNESS. Approximately, but still only ten per cent of the
nnual tonnage.

By Mr. McCLENNEN:

Q. But still only ten per cent of the annual tonnage. Is it not
air to say that the Ogden gateway is competitive for a substantial
mount of southern California freight during certain times of the
ear for Middle West territory east bound?

A. It is fair to say that the route is competitive for a substantial
hare of the citrus fruit from southern California.

Q. I call your attention to petitioner's Exhibit 43–44, to the east-
ound tonnage through Ogden to the Atlantic seaboard of 154,229
ons, and to defendants' Exhibit No. 80, eastbound tonnage via Og-
len from north of Mojave and Santa Barbara in California, and in
Nevada 140,900 tons. From what source did the 13,329 tons come?

A. From southern California?

Q. That was probably a citrus fruit movement, was it?

A. Yes.

289 Q. And was eight plus per cent of the total Ogden move-
ment eastbound to the Atlantic seaboard?

A. Yes.

Q. And was moved presumably in the two months, as you have
entioned in the case of the Middle West?

A. Chiefly.

Q. Chiefly. And in like manner was perhaps thirty-two or thirty-
hree per cent of the total movement through Ogden to the Atlantic
eaboard east during the period when the movement was in prog-
ess; that is, April and May of the year?

A. I make the calculation that it is thirty per cent of the move-
ent of those two months, but still only eight per cent of the annual
onnage.

Q. Of the annual tonnage. Would it be fair to say that the Og-
len gateway is competitive for southern California freight, southern
California citrus fruit, eastbound to the Atlantic seaboard, to a sub-
tantial extent during portions of the year?

Mr. BLAIR. With what?

Mr. McCLENNEN. With the El Paso gateway.

The WITNESS. The Ogden route is competitive for citrus fruit
290 to Atlantic seaboard territory from southern California during
certain seasons of the year.

By Mr. McCLENNEN.

Q. And to a substantial extent?

A. To the extent of the percentages that I have stated.

Q. As a traffic matter that is pretty substantial, is it not?

A. Eight per cent is not very substantial.

Q. What would you call the minimum percentage of what was substantial?

A. In this case of which I was speaking I would call it fifty per cent.

Q. Then, all you mean when you speak of the Ogden gateway as not being competitive to a substantial extent for southern California freight, is that it can not control fifty per cent of that traffic?

A. No; I mean that it takes an inappreciable amount, westbound and it takes only this citrus fruit eastbound.

(Whereupon an adjournment was taken until to-morrow, Friday April 23, 1915, at 10.30 o'clock a. m.)

2291 TWENTY-EIGHTH DAY.

ROOM 2506, 165 BROADWAY,
New York City, Friday, April 23, 1915.

The hearing was resumed, pursuant to adjournment, at 10.30 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. H. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pacific Company.

2292 LEWIS J. SPENCE, the witness under examination at the taking of adjournment, resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. McCLENNEN:

Q. Is it correct to say, Mr. Spence, that in your opinion the territories as to which the Ogden gateway and the El Paso gateway are competitors, in a real and practical sense, are the Middle West territory as you have described it and the Atlantic seaboard territory as you have described it, on the east; and southwestern Oregon, Nevada, California north of a line drawn across the State through Mojave and Santa Barbara, and, as to citrus fruits during a certain portion of the year, California south of that line down to a line drawn across the State through Banning, as the territory on the west?

A. Between all points in the territories that you have described through rates apply via the El Paso route and via the Ogden route, and the line west of Ogden, with its connections east thereof, and the line west of El Paso, with its connections east thereof, afford alternative routes for that traffic, and in that sense are competitive.

2293 Q. And not merely theoretically, but practically, in the movement of substantial volumes of freight?

A. We encourage and facilitate the movement of as much as possible by both gateways.

Q. I was speaking more of what actually did move than of the effort at this moment; and from the territories defined in the question there move through the two gateways substantial volumes of freight, making the gateways competitive in a practical sense and not merely as paper gateways. That is true, is it not?

A. The two through routes are competitive in the practical sense that I have described. The statistics show whether the volume of business is substantial.

Q. And competitive between the east and west territories just described?

A. Yes.

Q. Have you before you now petitioner's Exhibit 47–48 and defendants' Exhibit 63?

A. Yes.

Q. On petitioner's Exhibit 47–48, the eastbound tons, you note, are 163,180?

A. Yes.

2294 Q. And on defendants' Exhibit 63 you notice the eastbound tons are 85,059?

A. Yes.

Q. The first figure being from all of the territory covered by the Southern Pacific Company west of Ogden and El Paso, and the second figure being further defined by the phrase, in the defendants' Exhibit 63, "open to traffic via Ogden gateway". That definition in defendants' Exhibit 63 is what accounts for the difference in those two figures, is it not?

A. Yes.

Q. In arriving at your 85,059 on defendants' Exhibit 63, what territory on the west did you include?

A. In Exhibit 63 we included all points west or northwest of Banning, inclusive.

Q. Does that mean, then, that 78,121 tons destined to Atlantic seaboard territory through El Paso originated between Banning and El Paso?

A. Yes.

Q. Was much of that in California?

A. No. It consists largely of products of the mines from Arizona and New Mexico.

2295 Q. Comparing the same exhibits westbound, you note that the figure for the whole is 105,808 tons, and for the more confined territory, 94,737 tons, leaving a difference of 11,071 tons?

A. Yes.

Q. Was that 11,071 tons pretty much all destined to New Mexico and Arizona?

A. Yes.

Q. Have you the figures which disclose how much of this 85,059 on Exhibit 63 originated north of the Santa Barbara-Mojave imaginary cross-State line?

A. We have it here in one of the statements.

Q. In answer to this question you call my attention to defendants' Exhibit 80?

A. Yes.

Q. Is it true that the item on defendants' Exhibit 80 of 37,166 plus 603, plus 13,362, making 51,131 tons, plus the item on Exhibit 77 of Oregon, 7,533 tons, making a total of 58,664 tons, states the part which originated north of the Santa Barbara-Mojave line, of the 85,059 which appears on Exhibit 63?

A. No.

2296 Q. You mean that the figure which I have just given of 58,664 would require a slight correction by the deduction of such freight from Oregon as passed through Ogden during the fifteen days in which the Roseville gateway was open?

A. Yes.

Q. Then would it be sufficiently accurate for practical purposes to say that of this item of 85,059 eastbound through El Paso, defendants' Exhibit 63 included approximately 58,000 tons which originated in Oregon and California north of an imaginary transverse line drawn through Santa Barbara and Mojave?

A. I do not want to quibble on figures, but without any knowledge of what the Oregon traffic is, I would not want to subscribe to the 58,000 tons. I do subscribe to your previous question that, deducing whatever moved via Ogden——

Q. You mean you do not want to commit yourself on what went through Ogden during those fifteen days?

A. Yes. I do not know.

Q. It necessarily was an inconsiderable amount as compared with the total figure of 58,664, was it not?

A. Well, it would necessarily be about one-twenty-fourth of the natural movement via Ogden.

2297 Q. From Oregon alone?

A. From Oregon alone; yes.

Q. Now, am I right in understanding that to get the westbound tonnage from the Atlantic seaboard through El Paso which was destined north of the Santa Barbara-Mojave imaginary line, and is buried in the item of 94,737 on defendants' Exhibit No. 63, we should add the figures appearing on defendants' Exhibit 80, of 41,762, and 2,174, and 14,546, making 58,482, and such portion of the figure 1,743 on defendants' Exhibit No. 77 as did not move west through Ogden during the last fifteen days of the period?

A. Yes.

Q. The result, then, is that the westbound tonnage from Atlantic seaboard territory to the points north of Santa Barbara-Mojave, through El Paso, was somewhere between 59,000 and 60,000 tons?

A. I would say that it exceeded 58,500 tons.

Q. And did not exceed 60,225 tons?

A. Yes.

Q. Have you before you petitioner's Exhibit No. 49–50, and defendants' Exhibit No. 64?

A. Yes.

2298 Q. Is it true that the difference on the eastbound to Middle West territory, through El Paso, of 271,897 tons, on petitioner's Exhibit 49–50, and 222,325 tons on defendants' Exhibit No. 64, of 49,572 tons, originated between Banning and El Paso?

A. Yes.

Q. And therefore most of it in Arizona and New Mexico?

A. Yes.

Q. On the same exhibits, is it true that the difference between the westbound El Paso-Middle West figure, 269,970 tons, on petitioner's Exhibit 49–50, and 219,246 tons on defendants' Exhibit No. 64, or 50,724 tons, was destined for points between Banning and El Paso?

A. Yes.

Q. And therefore mostly to Arizona and New Mexico?

A. Yes.

Q. Is it true that in order to get the portion which originated north of the Santa Barbara-Mojave imaginary line, and which is buried in the item 222,325 tons on defendants' Exhibit No. 64, we should turn to defendants' Exhibit No. 79 and add the figures 1,244 and 1,177 and 76,777, making a total of 79,198 tons, and should

2299 add to that from defendants' Exhibit No. 78 such portion of the item 1,878 as did not move east through Ogden after the opening of the Roseville gateway during the last fifteen days of the period?

A. That is correct.

Q. So that the figure is somewhere between 80,000 and 81,000 tons?

A. Yes.

Q. That is, there moved from points north of Santa Barbara and Mojave through the El Paso gateway to the Middle West territory, east bound, somewhere between 80,000 and 81,000 tons?

A. Yes.

Q. Is it correct that to get the figure in the reverse direction between the same territories, which is buried in the figure 219,246 on defendants' Exhibit No. 64, we should turn to defendants' Exhibit No. 79 and add the figures 13 and 11,278 and 75,754, making a total of 87,045 tons, and such portion of the figure on defendants' Exhibit No. 78 of 10,716 as did not move west through Ogden during the last fifteen days after the opening of the Roseville gateway?

A. Yes.

Q. If we added the total, it would be 97,761. From
2300 that is it safe to say that the true figure was somewhere between 90,000 and 97,000 tons?

A. Yes.

Q. Then there moved west from Middle West territory through the El Paso gateway to points north of the imaginary line through Santa Barbara and Mojave somewhere between 90,000 and 97,000 tons?

A. Yes.

Q. Have you before you defendants' Exhibit No. 77?

A. Yes.

Q. Yesterday you will recall determining that 13,329 tons, from between the Mojave line and the Banning line, moved through Ogden to Atlantic seaboard territory, which you defined as being citrus fruit traffic [referring to page 2288, et seq. of the record]?

A. Yes.

Q. Am I correct that that 13,329 tons is buried in the figure 41,[illegible] on defendants' Exhibit No. 77?

A. Yes.

Q. Have you before you defendants' Exhibit No. 78?

A. Yes.

2301 Q. Calling your attention to yesterday's testimony, [illegible] 2279, and the figure thereon, 37,757, as that substantially all of which originated in southern California, am I right that that figure is buried in the figure 178,978 on defendants' Exhibit 78?

A. Yes.

Q. Both of your answers as to these east and west figures just discussed may require a little correction, may they not, for such traffic may have moved east or west through Ogden to Oregon during the 15 days after the opening of the Roseville gateway?

A. Yes.

Q. Have you before you defendants' Exhibit No. 65?

A. Yes.

Q. On that statement you have included the east and west tonnage through each gateway between the areas which you have defined this morning as being the areas as to which the two gateways are competitive, have you not?

A. Yes.

Q. If you add the figure 179,796 east and west via El Paso to and from Atlantic seaboard to the figure 441,571 tons east and west El Paso to and from Middle West territory, and the figure 223,145

2302 east and west Ogden tons to and from Atlantic seaboard territory and 628,623 east and west Ogdon tons to and from Middle West territory, it gives you a total of what?

A. 1,473,135 tons.

Q. That was the total east and west tonnage through the two gateways between what you conceive to be the areas as to which the two gateways are competitive?

A. That represents the total tonnage via El Paso and via Ogden.

Q. You mean the total between the territories described?

A. Between the territories that I have described.

Q. If you add from, say, defendants' Exhibit 65, the four items of revenue from the four totals in tons that we have just considered, what was the total Southern Pacific Company's revenue from the movement of this 1,473,135 tons; that is to say, adding $3,101,292 and $4,149,911 and $1,519,772 and $5,028,084?

A. $13,799,059.

Q. Have you before you petitioner's Exhibit 53 and defendants' Exhibit 68-1/2 and defendants' Exhibit 70?

A. Yes.

2303 Q. The westbound tonnage from the Atlantic seaboard to Nevada in the year in question via El Paso was 539 tons and that via Ogden 2,138 tons?

A. Yes.

Q. About twenty per cent moved via El Paso and eighty per cent via Ogden?

A. Yes.

Q. Have you before you defendants' Exhibit 80?

A. Yes.

Q. In that you have subdivided the central and northern California-Atlantic seaboard movement into the different gateways?

A. Yes.

Q. Did substantially all of that Ogden tonnage go over the Union Pacific?

A. Yes.

Q. Since the opening of the Western Pacific the Central Pacific does not get, at Ogden, or deliver at Ogden, much through tonnage from or to the Denver & Rio Grande?

A. A small percentage of the tonnage.

Q. But very small?

A. Well, comparatively speaking, small.

2304 Q. The next three items east and west in the subdivision of defendants' Exhibit No. 80 are subdivisions of the El Paso movement into the Sunset-Gulf routes, either Galveston or New Orleans, and New Orleans all-rail, and to El Paso and other gateways, all-rail?

A. Yes.

Q. In what ways would those items, Atlantic seaboard-New Orleans rail, move between New Orleans and Atlantic seaboard? Would it move over many different routes, or is there any conspicuous example of a rail route over which that moves?

A. There is no conspicuous example.

Q. You distribute that among quite a number?

A. Yes; as the result of the efforts of the various connections.

Q. Does the Southern Pacific Company make any effort on any commodities to work an all-rail movement between the Atlantic seaboard and the Pacific coast through New Orleans?

A. No.

Q. Turning, now, on the same exhibit, to the east and west movement via El Paso and other gateways, which I think will mean substantially other Texas gateways, can you give me any idea of

2305 the portion of those two items that is Rock Island?

A. Not in figures, but in a general statement; the major portion.

Q. What other connection is there worth mentioning that would enter into those items?

A. Kansas City, Mexico & Orient Railroad connections at Alpine, Texas; Missouri, Kansas & Texas, at San Antonio; of the various lines at Houston.

Q. Is that movement, resulting from Atlantic seaboard through El Paso by rail in 13,362 tons east and 14,546 tons west, due to any substantial extent to the efforts of eastern connections of the Rock Island, or is it chiefly due to the Rock Island's own effort?

A. From Atlantic seaboard territory it is due to the joint efforts of the Rock Island and connections.

Q. Do the lines east of Chicago make an effort for El Paso as against Ogden?

A. Such effort as the Rock Island can secure as a reciprocal return for what they may give those connections.

Q. That is, it is no ambition on the part of the eastern lines to put it through El Paso, but simply to do something for the Rock
06 Island in return for what the Rock Island does for them?

A. The eastern line has no interest in sending it through El
aso, but derives its long haul to Chicago or St. Louis, whether it
es El Paso or whether it goes Ogden or Santa Fe or Missouri
acific.

Q. Have you any means of stating how much of those El Paso
nd other Texas gateways items originate or are destined north of
Iojave?

A. All of them. Are you speaking of defendants' Exhibit No. 80
ow?

Q. I am speaking of defendants' Exhibit No. 80; yes.

A. All of them.

Q. Have you before you defendants' Exhibit No. 79?

A. Yes.

Q. This is for the Middle West, the correlative of defendants'
Exhibit No. 80 for the Atlantic seaboard?

A. Yes.

Q. Referring, on defendants' Exhibit No. 79, to the Ogden gate-
way movement, is that substantially all Union Pacific?

A. Much the largest percentage of it.

307 Q. The next item on that exhibit, via Sunset-Gulf route—
does that mean an eastbound tonnage that actually gets on the
oat at New Orleans or Galveston, or is that simply a tonnage that
tarted out routed via the steamer lines and was changed before it
eached the boat?

A. It is tonnage that moved via the steamship lines, by reason of
ts having been originally consigned to New York, and having been
reconsigned either in transit or upon arrival at New York to these
points on the Atlantic seaboard territory.

Q. So that the delivery was made into the Middle West territory
by eastern lines drawing it west from New York?

A. Yes.

Q. The next item on defendants' Exhibit No. 79—what are the
lines over which the substantial part of those New Orleans rail items
moved?

A. I should say it was distributed between all the lines east of
New Orleans.

Q. Such as what?

A. The Queen & Crescent route; the Louisville & Nashville; the
Illinois Central; the Southern Railway; the Atlanta & West Point;
the Western Railway of Alabama.

308 Q. Is the Southern Pacific Company making any effort for
the New Orleans gateway on Middle West territory?

A. The Southern Pacific is making its preferential effort for the Ogden route. It does not interfere with or in any way restrict the efforts of its connections to secure business via New Orleans.

Q. Does it make any effort to use any of that business with the Mississippi Valley lines, as you spoke of in connection with the Rock Island and its eastern connections—that is, to route traffic that way in return for getting the valley lines to use the Sunset rails instead of others?

A. Only that much effort that you might find in the total traffic from Texas, Louisiana, New Mexico, and Arizona, and all territory combined, that may be delivered to our connections at New Orleans, which is large.

Q. Does the Southern Pacific Company make any effort to obtain passenger traffic for the Pacific coast from New Orleans?

A. From Atlantic seaboard territory.

Q. It does?

A. Yes.

Q. What are the lines east of New Orleans, for that?

A. The short line to New Orleans is the Pennsylvania
2309 or Baltimore & Ohio to Washington and the Southern Railway and Atlanta & West Point and Louisville & Nashville. That is the shortest route. The passenger can be ticketed via Cincinnati—over any of the trunk lines via Cincinnati—and the line via Cincinnati to New Orleans.

Q. Are any through passengers passed from Cincinnati to New Orleans?

A. There is a daily tourist car from Washington to New Orleans. There is no first-class equipment.

Q. That runs over what road?

A. The Southern Railway.

Q. Any Middle West-Pacific passenger movement through New Orleans would be practically out of the question?

A. It would be simply the result of the passenger's especially wishing to go South, wishing to go through that country for some reason or to visit some point on that line.

Q. Coming, now, to defendants' Exhibit No. 79, to the item of El Paso and other gateways, which we understand to mean other Texas gateways; are those items substantially all Rock Island?

A. No; not substantially all. The largest percentage of the tonnage is Rock Island.

2310 Q. What other substantial route is there?

A. That previously described, the business which is brought to Alpine, Texas, by the Kansas City, Mexico & Orient and to San Antonio by the M., K. & T., and that which is brought to Houston by the several connecting lines east and north thereof.

. Will you repeat comprehensively the commodities which, from
ir nature, can not be moved by the split rail and water haul?
. Citrus fruit, deciduous fruit, vegetables, pianos and organs not
ackages, earthenware and crockery in bulk, fresh oysters, furni-
, automobiles and other vehicles, all bulk freight such as coal
coke, and freight in tank cars, considerable freight that may be
ked, but in such light packages that it will not bear rehandling;
example, the business of the National Biscuit Company, the
kages are so light that they require them to go through in the orig-
l car from point of shipment to destination; machinery which is
boxed or crated. There are doubtless other articles that I do not
ll at the moment.
. You use the term "fresh oysters" to distinguish from canned
oysters?
1 A. To distinguish from canned oysters; yes. Fresh oysters
move in trainloads from the east to California.
. Are none of these articles which you have just mentioned han-
d via the Panama routes?
A. Not to my knowledge. They may be, because the Panama
te does not involve the transfer that the Sunset Route does at Gal-
ton.
. It would, for all points except on the Pacific harbors and the
lantic harbors, would it not?
A. It would involve a transfer at New York if it came from the
erior, and so would the Sunset Route.
. A transfer from a short haul would not differ particularly,
its injurious consequences, from a transfer from a long haul.
uld it?
A. No; but two transfers are more objectionable than one, and
ee transfers are more objectionable than two.
. All of these articles which you have mentioned are articles
hich can be handled through the Ogden gateway or through the
l Paso gateway with rail connections east, are they not?
A. They can be, in so far as the application of rates is con-
12 cerned; but no one could persuade the oyster shipper to send
freight by any other than the shortest route.
. The articles which you have mentioned, other than eatables,
uld all be handled, and are handled, through El Paso in substan-
l quantities on the rail lines, are they not?
A. The routing via El Paso is entirely practicable on all of them
cept the perishable freight.
. What would that fresh-oyster business amount to, in tons, in
ear, so far as it is handled by the Southern Pacific Company?
A. I do not know. They are all shipped within a very short
riod of time, and they are shipped in train loads, when they are

shipped, in order to get quick despatch, I suppose. I do not kn
how many cars a year that would amount to.

Q. What is the season?

A. I think it is our oyster season here. They are sent out th
for seeding, very largely.

Q. The citrus fruit, deciduous fruit, and vegetable movement
practically exclusively eastward, not westward, is it not?

A. Chiefly eastward. Strange to say, citrus fruit
2313 shipped from Florida to California.

Q. The citrus fruit and the deciduous fruit and the veg
tables now move in substantial quantities through each gatew
Ogden and El Paso?

A. From the entire State; yes.

Q. What is the oriental freight—what kinds? I think silk a
teas have been mentioned.

A. I mentioned the principal imports as silk, tea, and matting

Q. What is the westbound freight?

A. I think the largest westbound freight—the largest single ite
I think of—is condensed milk. That is shipped from the Midd
West by the Borden Company, from their Middle West factories

Q. Does the tea and the matting as well as the silk take a pass
ger schedule?

A. No.

Q. Is it only the silk that takes a passenger schedule?

A. Only the silk, as a rule.

Q. The oriental freight eastbound, other than silk, can be handl
then, much as ordinary freight can be handled?

A. If the matting and tea go directly to the Atla
2314 seaboard territory from the Orient, it is handled via S

If it comes through the Pacific ports, it is usually sent
Middle West points for storage, and eventually reshipped and d
tributed to other territory.

Q. And it can go over any of the rail lines from San Francis
the Middle West?

A. I am not sure about the storage arrangements. The stor
arrangements and reconsignment arrangements are made by the li
on which the storing is undertaken, and the importers have usu
made their arrangements directly with those lines and have stored
warehouses served by the lines with which they have made th
arrangements. I am sure the arrangements do not apply by
routes. I am not sure by which ones they do not apply.

Q. Is the eastbound silk movement through Ogden exclusively

A. No.

Q. What other way does that move?

A. Vancouver and Seattle.

3315 Q. Then, limiting it to the silk which arrives in California, is that exclusively by Ogden?

A. That moves exclusively by Ogden.

Q. The Santa Fe has never put in an organization for that?

A. They have apparently never been able to make the time.

Q. Have they sought that business?

A. I presume they have. I do not know. I can not state for them. I presume they have.

Q. Do they run any passenger time freight over the Atchison?

A. Not to my knowledge.

Q. What is that eastbound silk movement, in volume?

A. I could not tell you from memory what it is, in volume; but it arrives at the Pacific ports, say, at Vancouver or at Seattle or at San Francisco, in lots of ten or twelve or fifteen cars on a ship, and its arrival at either of those ports is anticipated by the railroad putting the equipment there ready to load, and despatched in a special train, practically, as soon as the freight is out of the ship.

3316 Q. Is it a traffic that arrives with regularity?

A. Yes.

Q. And is it a matter of daily, weekly, or monthly arrival, or what is a fair estimate of the periods when a trainload arrives; that is, a short trainload of the kind you have described?

A. I should imagine that a trainload of silk would arrive at one of the three ports, Vancouver, Seattle, or San Francisco, perhaps every sixty days.

Q. The occasion for great expedition in that was originally the Suez competition, was it not?

A. I do not see how the Suez competition could have created the necessity for despatch. My understanding has always been that it was on account of the risk entailed, and the enormous value of the silk, that the practice was inaugurated and became competitive between the Canadian Pacific, the Great Northern, the Northern Pacific, and the Southern Pacific.

Q. Does that mean it was due to the desire of the railroads to get it off their hands as soon as possible?

A. Yes; to get it out of their possession. That is my under-

3317 standing of the matter. It has been going on many years.

Q. On page 2160 of your testimony of April 21 you give an item of 122,481 tons. Is that exclusively Southern Pacific Ogden eastbound fruit and vegetables to the Atlantic seaboard?

A. No; that embraces the fresh fruit and vegetables from California to the Atlantic seaboard by the Ogden and El Paso routes.

Q. How is it divided as between the two routes?

A. From that district of Ohio and Indiana that I described in my direct testimony.

Q. Is there much transcontinental movement of coal and
2322 coke?

A. If by "transcontinental movement" you mean California——

Q. I mean defined as you defined it, to California from east of what you call the Colorado gateway and north of the south line extended from that gateway.

A. There is a very considerable movement from Utah and Colorado. There is a movement from Virginia and the eastern part of West Virginia, and some from Pennsylvania. What the total volume is I do not recall.

Q. You would not comparatively speak of it as a large volume of traffic, would you?

A. That which originates where?

Q. East of the Colorado gateway.

A. I would say that there was a considerable tonnage, including that which originates in Colorado. I am not sure whether that is east of the gateway or west. There is a very considerable coal traffic.

Q. Apart from that Colorado movement there is not much, if any, moved from east of the Colorado gateway, is there?

A. When you speak of coal you speak of a commodity, of
2323 course, which you generally consider in very large volumes, but there is quite considerable coal and coke from Virginia from the Pocahontas district and the Virginia district, and from eastern West Virginia, and I think there is some from Pennsylvania and some from Maryland, to California. There is some soft coal and some anthracite coal.

Q. That comes, to a considerable extent, through El Paso?

A. No; I think through Ogden, chiefly.

Q. Would you think there was much divergence between the two figures on the two gateways?

A. I do not know, really. I have never seen the figures on the two gateways. Both gateways are open for the traffic.

Q. The tank-car movement is largely—eastbound—wines, is it?

A. The tank-car movement consists of wines, liquid asphalt, and they ship mineral water in tank cars, and oil. Those are the chief commodities.

Q. Is the great bulk eastbound?

A. Of the wine and asphalt, eastbound. Of the mineral water and oil, westbound.

Q. You have some arrangement, have you not, with some
2324 tank-car lines to ship wine to New Orleans and barrel it there?

A. We have tried some of that. I am sorry to say it has not been effective in meeting water competition.

Q. When was that special attempt to meet water competition inaugurated?

A. Last summer, I think.

Q. Do you remember what the rate was?

A. Fifty-five cents.

Q. That was fifty-five cents via the Sunset-Gulf route, with a barreling in transit privilege at New Orleans?

A. At New Orleans.

Q. Was the barrel included in the paid weight?

A. In the paid weight?

Q. Yes.

A. According to my recollection, there was a specific provision in the tariff that covered that. I think it was stated that way. It was considered in making the rate, I know. The tariff, however, would speak for itself. It is somewhat specific, and makes plain just what it is intended to cover.

2325 Q. It resulted in a much more favorable rate than the all-rail rate?

A. The all-rail rate was seventy-five cents.

Q. That is, it was seventy-five cents against fifty-five cents?

A. Yes.

Q. The barrels originate largely in the eastern part of the country?

A. No; in Louisiana and Arkansas.

Q. In Louisiana and Arkansas?

A. That was the purpose of the arrangement, to bring the barreling of the wine in close proximity to the staves. They had been shipping staves to California, and they expected they would be able to establish some business by that arrangement, as against the sea route, by saving the cost of transportation of the staves, and in that way bring the two costs of transportation closer together.

Q. That would result in a saving to the shipper on his barrel cost?

A. Yes.

(Whereupon a recess was taken until two o'clock p. m.)

2326 AFTER RECESS.

LEWIS J. SPENCE, the witness under examination at the taking of recess, resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. MCCLENNEN:

Q. Mr. Spence, will you please give the method by which you arrived at 122,481 tons being 55.8 per cent, as appears on page 2160 of the record?

A. The total traffic via El Paso and Ogden during the fiscal year ending June 30, 1914, from points in California to Atlantic seaboard territory aggregated 219,384 tons, of which the 122,481 tons which constituted the fresh fruit and vegetables represented 55.8 per cent.

Q. Have you there that 219,384 divided as between Ogden and El Paso?

A. No; it was compiled to get this percentage.

Q. You have referred to petitioner's Exhibit No. 22, page 61 whereon the percentage of traffic carried via the Atchison, Topeka & Santa Fe, there described as the "Atlantic & Pacific", between

2327 October 1, 1884, and December 31, 1885, is stated as 20.34 per cent. That percentage, you understand, do you not, to be a percentage of east and west bound combined?

A. Yes; through traffic.

Q. There is nothing on the exhibit, is there, from which to determine how much of that originated or was laid down north of Mojave?

A. No.

Q. Have you any means outside of the exhibit of stating statistically or forming any valuable estimate as to how much of that was north of Mojave?

A. I have no means of stating statistically how much of it was north of Mojave, but I was in the field and actively encountered the competition of the Santa Fe for northern and central California traffic.

Q. You were in the eastern field?

A. Yes.

Q. And the effort of the Santa Fe was exerted chiefly upon the eastern end, whether it was for the western movement or the eastern movement, was it not?

A. The effort was not entirely confined to the eastern end. The success may have been.

2328 I would like to say, with reference to my answer, that I was I was in the field during the several years preceding 1899 that were covered by the original question, not in the field on the date of the exhibit.

Q. That is, your comment upon being in the field has more reference to the period near to 1899 than it does to the precise period covered by the exhibit, which ended with the end of 1885?

A. It would include the early nineties.

Q. Was there much southern California traffic in 1885?

A. It was not very large; no. The citrus fruit industry had not developed at that time.

Q. How about the westbound traffic to that region?

A. Well, it would bear a corresponding ratio in importance to the eastbound, for the reason that the population had not at that time increased.

Q. In reading this exhibit, petitioner's Exhibit No. 22, from which this percentage 20.34 is taken, you have assumed the 100 per cent to be California traffic, have you not?

A. Whatever the exhibit shows. I described it as through transcontinental traffic, I think. I do not think there is any doubt about its having been confined to California, because at that time
2329 there was no connecting rail line north of California.

Q. Had the Arizona or New Mexico traffic come to an appreciable amount in 1885?

A. It never moved via Mojave.

Q. You will observe that this exhibit does not indicate a Mojave——

A. Yes; it indicates the Atlantic & Pacific, which went via Mojave.

Q. Was there not any access to the Atlantic & Pacific except through Mojave?

A. No.

Q. That is, neither Arizona nor New Mexico freight for the Atlantic or Middle West could get on to it?

A. No. The Santa Fe would have to take that freight through Deming. I think, too, that exhibit shows that the tonnage represented by this percentage was Atlantic & Pacific-Southern Pacific tonnage.

Mr. BLAIR. It does.

The WITNESS. It indicates that it chiefly moved north of Mojave.

By Mr. MCCLENNEN:

Q. Coming, now, to the present time, have you any means of
2330 giving, in approximate figures, the amount of tonnage originating on Southern Pacific rails and delivered to the Santa Fe in California, and destined to Middle West or Atlantic seaboard points?

A. I could give you an idea of the total traffic from Southern Pacific points delivered to the Santa Fe at California junctions, destined to all transcontinental territory; that is to say, to points east of Albuquerque, which is accessible to our longer-haul routes. For example, we can take freight via El Paso to any point on the Santa Fe east of Albuquerque, and Albuquerque is the defined transcontinental line.

Q. Your answer, under those circumstances, would include some freight for Atchison local delivery?

A. It would include no freight for which we can not compete via El Paso.

Q. But would include a substantial amount of freight that would eventually be short-hauled by the Atchison at the delivering end?

A. The Atchison, extending all the way to Chicago. All points west of Chicago would come within your last statement. They would be short-hauled unless they hauled it all the way to Chicago.

Q. Can you state, correspondingly, the tonnage from the
2331 Atlantic seaboard and the Middle West territory long-hauled over the Atchison to California junctions and delivered on Southern Pacific rails?

A. No.

Q. You have not the westbound figure?

A. No.

Q. What is the eastbound figure for the tonnage as you have described it in your answer?

A. During the last fiscal year about 90,000 tons.

Q. Have you any knowledge of how much of that went east of the Mississippi River?

A. No; that tonnage is compiled for the purpose of ascertaining what traffic originating on our lines, destined to points that we would like to haul via El Paso and can haul via El Paso, has gone to our connections at a short-haul junction.

Q. What are the conspicuous commodities in that tonnage?

A. Everything which that section of California produces.

Q. Is there any large amount of fruit in that tonnage?

A. Yes.

Q. Would that be the largest item?

A. Not necessarily green fruit. It would include dried
2332 fruit, canned goods, wine, asphalt, beans, barley, and green fruit.

Q. That delivery to the Atchison at the California junctions is due to the shipper's routing?

A. Yes.

Q. From your general knowledge of the soliciting situation, can you say whether that routing is or is not largely influenced by the efforts of the Atchison with the eastern consignees?

A. No; I could not say, with respect to that particular traffic, how much was due to the influence or control of the consignees and how much was due to the influence or control of the shippers. The Atchison has the same access to the shipper as it has to the consignee, and the same opportunity to solicit him. It is in a position to afford him facilities, to put its equipment in, and all that sort of thing.

Q. Has that tonnage, short-hauled by the Southern Pacific and hauled from California east by the Atchison, been a more or less constantly increasing amount?

A. Undoubtedly so.

Q. The Atchison service has been an improving service, has it not?

2333 A. Yes.

Q. When, should you say, did the Atchison service reach an equality with the service rendered by the Sunset Route or the Ogden route?

A. In the early nineties.

Q. Do you remember when it was that the Atchison perfected its arrangements for the billing and through trackage of cars to the Atlantic seaboard?

A. No; I do not remember. The line was not completed into Chicago until 1888.

Q. Yes.

A. I think it was sometime after that.

Q. It was a pioneer in that, was it not?

A. I am not sure about that. Through billing in the early days was a very uncommon thing. Whether the Santa Fe put it in ahead of other transcontinental lines I could not say. It was taken up by one line after another, not only in transcontinental business, but all over the United States.

Q. When did the Southern Pacific begin to through bill through Ogden to the Atlantic seaboard?

A. I could not state from memory accurately, but I should say in the early nineties.

2334 Q. When did it begin to run through package cars to the Atlantic seaboard?

A. I could not tell you that from memory, but they have been run for a great many years.

Q. Did they precede the through billing?

A. I do not think they did.

Q. Through freight cars for carload lots have been moved ever since the railroads had junctions?

A. Originally to a limited extent. It was not a common practice, as it is in recent years. Each railroad used to hold on to its own equipment and transfer at the junctions; and retained its own equipment, and did not allow it out of its possession.

Q. When did through cars for carload lots become the practice through Ogden?

A. I could not say with any degree of accuracy. That was one of the gradual developments not only there but throughout the United States. That is, on a small number of through cars that might be run, more and more were run every year. That has been a gradual transition.

Q. It was really one of the competitive elements of the situation that were growing?

2335 A. Growing more acute all the time.

Q. The Santa Fe's most effective competition with the Southern Pacific was during the nineties, with reference to southern California, being in opposition to the Santa Fe route, was it not?

A. With reference to southern California?

Q. Yes.

A. In the early nineties; yes.

Q. The presence of the Atchison, with the improving service thereon, was a spur to the Southern Pacific to improve its service, was it not?

A. The spur was applied the other way. The Southern Pacific had supplied a service superior to anything that had ever been given across the continent, and the Santa Fe was spurred to improve its service to meet the competition.

Q. At some time the Ogden route—and by the Ogden route I mean from San Francisco to New York that way—was spurred on to an improvement in its service, was it not?

A. Especially the eastern lines in that route, who had been in the service for many years.

Q. The presence of the Atchison's competition had an effect on that improvement in service, did it not?

2336 A. It may have had some effect, but the improvement was mainly stimulated by the Sunset service.

Q. The Sunset service was, at least up to 1901, the pet service of the Southern Pacific Company?

A. It was the route by which it sought to secure the Atlantic seaboard traffic.

Q. It was the route on which it was putting out its great efforts to make the service so effective that the freight would move that way, was it not?

A. I do not know that the Southern Pacific exerted any more effort on the Sunset Route than it did on its part of the line west of Ogden, but it was unable to coordinate the efforts of the lines between Ogden and the Atlantic seaboard territory.

Q. It succeeded in coordinating the efforts of the Mississippi Valley line, so far as Middle West territory was concerned, did it not?

A. Between Cincinnati and New Orleans?

Q. Yes.

A. Yes.

Q. It made an effort to secure that coordination, did it not?

2337 A. Those lines made the effort themselves. They were hungry for the business and sought the business.

Q. Were they any hungrier for the business than were the lines operating to Omaha?

A. East of Omaha?

Q. Operating westward to Omaha?

A. No; I do not think that they wanted the business any worse than the Union Pacific did.

Mr. BLAIR. What was that question?

Mr. MCCLENNEN. I am referring to the lines from Cincinnati, if you please, to Omaha.

By Mr. MCCLENNEN:

Q. Were not the lines in that region as anxious to get business to Omaha as the Mississippi Valley lines were to get business to New Orleans?

A. I never saw any manifestation of it.

Q. You never did?

A. No.

Q. Do you know personally of the effort, if any, made by the Southern Pacific to get coordination with those lines between Omaha and points east of Omaha in Middle West territory?

2338 A. In the usual course of events, that effort would be made by the Union Pacific with its immediate connections east.

Q. Did the Southern Pacific ever, so far as you know, attempt to organize that coordination?

A. I do not know. I would not know.

Q. You did know of the efforts that were put forth to improve the Sunset service?

A. I was at one end of it; yes.

Q. Is it true that, in your judgment, the Sunset Route would never have been able to secure a substantial share of the traffic between Atlantic seaboard territory and California if the Southern Pacific's short line had been to Los Angeles, we will say, or to the southern boundary of California, and its longer haul to Ogden? Or, in other words, if the influence of the Southern Pacific upon that traffic had been exerted in favor of the Ogden haul the Sunset Route could never have made the progress that it made in getting business?

A. That is true.

Q. Was not, then, the progress of the Sunset Route in its outstripping of the Ogden route due not merely to the lack of coordination of the eastern railroad connections of the Ogden route, but to the intense effort of the Southern Pacific Company to improve and secure the use of its Sunset haul, with the correlative relaxation of effort by the Southern Pacific Company over its Ogden route?

2339

A. It was attributable to the operation of the line under management between California and New York.

Q. The Atchison, as soon as it took up the effort to induce through business across the country, succeeded with rapid strides, did it not?

A. It succeeded with gradual strides. It was a process of years for them to accomplish the desired result.

Q. Its carrying trade, its through business, increased year by year with considerable rapidity after it came under the reorganization management, after 1895, and got into San Francisco in 1899, did it not?

A. What do you mean by "rapidity"?

Q. I mean barring the effect of the business depression upon freight carriage, that the Atchison takings in each year were substantially in excess of those of the preceding year?

A. I think so.

Q. When you said, in answer to an earlier question, that
2340 was true that if the influence of the Southern Pacific Company upon that traffic had been exerted in favor of the Ogden haul the Sunset Route could never have made the progress that it made in getting business, you meant to indicate, did you not, that the influence of the Southern Pacific Company upon that business had not in fact, been exerted in favor of the Ogden haul?

A. No; I meant that the influence had been exerted in favor of the Sunset haul.

Q. You say that if the influence of the Southern Pacific Company had been exerted in favor of the Ogden haul, the Sunset Route could never have made the progress that it made in getting business. Under the conditions under which you made that answer, you meant to convey the idea, did you not, that the Sunset Route had made this progress because it had not exerted its influence in favor of the Ogden route?

A. I meant to answer it by saying that the success of the Sunset Route was due to the influence of the Southern Pacific being exerted in favor of that route.

Q. I put the whole statement before you [handing witness record in Union Pacific merger suit] as I read it from the Union Pacific record, page 3392. You meant to convey the impression, did
2341 you not, that the lack of influence by the Southern Pacific Company in favor of the Ogden route was an essential to the success which the Sunset Route had had?

A. I answered two questions, and they were both incorporated in your first question to-day. The first, that if the Southern Pacific Company had not been in management of the entire line from coast to coast, what effect would that have had?

Mr. McEnerney. I think Mr. Spence has not finished his answer.

The Witness (continuing). The question was: What effect would that have had upon the Sunset Route into California? My answer was that the Sunset Route, in my judgment, would never have been able to secure a substantial share of the traffic between Atlantic seaboard territory and California if the Southern Pacific's short haul had been to Los Angeles, we will say, or to the southern boundary of California, and its longer haul to Ogden. What followed is a part of the same answer.

By Mr. McClennen:

Q. And what followed was the words: "Or, in other words, if the influence of the Southern Pacific upon that traffic had been ex-
3342 erted in favor of the Ogden haul, the Sunset Route could never have made the progress that it made in getting business", was it not?

A. Coupled with the previous statement that if the Southern Pacific's line had stopped at Los Angeles or at the southern boundary of California.

Q. Coupled with the statement that you have just read?

A. Yes; the statement I have just read; if its line had stopped at Los Angeles or the southern boundary of California.

Q. To avoid the slightest question about the whole context—it is true, is it not, that there is no occasion to begin to read before this last question on page 3991 [indicating in record]?

A. I really do not know. I shall have to look at it.

Q. Will you glance at that and see whether it occurs to you that there is anything prior to that that is of consequence in order to get perfectly fairly the context in which you used the words to which we have just referred?

A. There is nothing immediately preceding it which affects that question.

Q. Then I will begin with that question, at the bottom of page 3991 of the Union Pacific merger record, and I read as follows:
3343 "Q. By the way, Mr. Spence, if the Southern Pacific line in California had stopped at the southern boundary of the State, if the Southern Pacific Company had not been in the management of the entire line from coast to coast, what effect would that have had upon the development of transcontinental business by the Sunset Route into California?

"A. The Sunset Route, in my judgment, would never have been able to secure a substantial share of the traffic between Atlantic seaboard territory and California. If the Southern Pacific's short haul had been to Los Angeles, we will say, or to the southern boundary of California and its longer haul to Ogden; or, in other words, if the

influence of the Southern Pacific Company upon that traffic had b
exerted in favor of the Ogden haul, the Sunset Route could n
have made the progress that it made in getting business.

"Q. The Southern Pacific would naturally have preferred its l
haul would it not?

"A. Its long haul; yes."

Now, from that point on will you glance at the book to see whe
it is necessary to read anything more to make the portion read wh
fair to you?

A. I think that statement that has been read into
2344 record is correct.

Q. You see, in the connection in which you use those wo
do you not, that you have put the lack of influence of the South
Pacific Company in favor of Ogden as a prerequisite to the suc
which the Sunset Route did obtain?

A. There are two prerequisites.

Q. Two prerequisites?

A. One, if the Southern Pacific line had ended at the Colo
River in southern California and the remainder of the line to
York had been under a separate management, that the line w
not have achieved the success which it did achieve in securing
traffic.

Q. Do you observe that, in the phrase as you put it, you put i
the alternative, in this form:

"Or, in other words, if the influence of the Southern Pacific C
pany upon that traffic had been exerted in favor of the Ogden h

In using that expression in that case, did you not intend to lea
that the Southern Pacific Company's influence in those days had
been exerted in favor of the Ogden haul?

2345 A. I intended to be understood as meaning that the pr
ential effort of the Southern Pacific Company was to s
the traffic between California and the Atlantic seaboard via the
set Route. I did not intend it to be understood that the Sout
Pacific made no effort by its Ogden route, or that it did anyt
to interfere with anybody else making an effort by the Ogden r

Q. You meant to be understood to say, did you not, that some
in some way, the effort of the Southern Pacific in favor of the O
route had not been as great as it might have been?

A. I did not.

Q. Did you mean to leave it, when you made that answer i
Union Pacific case, that the Southern Pacific Company had
everything that it could to encourage through business through O
to the Atlantic seaboard from California?

A. I meant this: That the Southern Pacific Company's int
from the outset, and the interests of the people and the mercha

California, were absolutely identical; that if the Southern Pacific had had its own line through Ogden to New York prior to the time when the Sunset line was started, that it had as much interest in getting the California products promptly to the seaboard and in getting
2346 the merchants' products promptly from the seaboard to them, as it had after the opening of the Sunset Route, and that the opening of the Sunset Route afforded the facilities, which it did not have before, to accomplish that result.

Q. Do you think that which you are now stating was what you intended to convey by the language which I have used here?

A. I think so.

Q. What did you mean by the words in the quoted phrase "if"—and I emphasize that—"if the influence of the Southern Pacific Company upon that traffic had been exerted in favor of the Ogden haul"?

A. I meant that if the Southern Pacific line had stopped at the Colorado River that the preferential effort probably would have been in favor of the Ogden haul, but it did not stop at the Colorado River. It had its own line to New York, and thereby was afforded facilities to do what it could not do via Ogden.

Q. And you meant also, did you not, that if the preferential effort of the Southern Pacific Company had been exerted in favor of the Ogden haul the Ogden route would have prevailed over the Sunset Route?

2347 A. If our ownership had stopped at the Colorado River and the remainder of the line had been under separate control, we would have been as powerless to accomplish the service by that route as we would via Ogden, and that under those circumstances the Sunset Route would not have prevailed over the Ogden route.

Q. Did you not think that if the Southern Pacific Company's effort had been exerted in favor of the Ogden route with all the inspiration that comes from 100 per cent of the rate that the Ogden route would have prevailed over the Sunset Route even if the Sunset Route were a through route?

A. No, sir; and it would not have prevailed.

Q. Has it not now prevailed?

A. Conditions have changed very materially in recent years. I have said that the coordination that was impossible to get in those days, the interests of eastern lines that it was impossible to get in those days, have been thoroughly aroused and the business has been extended, the business has grown, and those lines are all absolutely interested.

Q. Was not one of the things as to which the Southern Pacific's interest might have been exerted in those early days if it had not had another 100 per cent route, the getting of coordination with the eastern roads?

2348 A. It made those efforts to get that coordination before the Sunset Route was opened, and was not successful.

Q. I thought you said that you did not know of those efforts yourself.

A. I did say that I did not know. You asked me if I knew what efforts had been made, and I told you I did not; but I do say that the Southern Pacific Company—this is obvious—that the Southern Pacific Company, when it had only its Ogden line, was interested in securing that traffic between the Atlantic seaboard and the Pacific coast against the Panama route and against the Cape Horn route, and it was not very successful; and it wanted the traffic, if any line ever did want it, and certainly it put forth efforts to improve its service.

Q. The Sunset Route, so far as Atlantic seaboard territory was concerned, furnished as efficient a means of competing with the Panama routes and the Horn routes as the Ogden route would furnish, did it not?

A. After it was opened; yes.

Q. So that in order to fend against the Panama routes and the Horn routes, so far as that could be done by rail carriers, the Sunset Route was sufficient?

2349 A. Any route was sufficient.

Q. The Southern Pacific Company did not need the Ogden route for that particular purpose, did it?

A. After the opening of the Sunset Route?

Q. Yes.

A. It did not need it for that purpose; no.

Q. The person having the important say as to the methods of developing traffic for the Southern Pacific Company prior to 1901, and thereafter to some extent, was Mr. J. C. Stubbs, was it not?

A. Yes.

Q. If any effort had been made to organize a through service through Ogden from the Atlantic to the Pacific and the reverse, in the ordinary course, it would have been made by Mr. Stubbs?

A. I think that is likely.

Q. Mr. Stubbs is still living?

A. He was the last time I heard of him.

Q. And upon the rolls of the Southern Pacific Company?

A. Upon the pension roll.

Q. Did you ever talk with Mr. Stubbs about the efforts, if any,

2350 which he had made to coordinate the eastern rail carriers with the Union Pacific and the Central Pacific for through transcontinental business?

A. I think my information prior to 1885 is historical, and I have no doubt that a good deal of it was gained from Mr. Stubbs.

Q. Do you mean by that that you did or did not talk with him on
t subject?
A. I could not tell you whether I talked with him or not.
Q. Do you now recall Mr. Stubbs having informed you of any
ort which he made after the opening of the Sunset Route to get co-
dination between the eastern roads and the Union Pacific and Cen-
l Pacific for through transcontinental service?
A. No.
Q. You were in the office of Mr. Edwin Hawley, were you not?
A. Yes.
Q. And Mr. Edwin Hawley was for years the general eastern agent
the Southern Pacific Company?
A. Yes; and subsequently assistant general traffic manager.
351 Q. Mr. Hawley was a peculiarly able railroad man?
A. One of the ablest railroad men of his day.
Q. His work directly and through his subordinates in securing
affic for the Southern Pacific Company was directed exclusively
ward the Sunset-Gulf route?
A. Preferentially.
Q. Mr. Hawley remained with the Southern Pacific Company up
what time?
A. March 1, 1902, as an officer.
Q. Up to what time was he the general eastern agent?
A. My recollection is that he became assistant general traffic man-
ger about 1890. I could not speak accurately as to that, but I think
at was about the date.
Q. Did he in that position also continue to exercise the functions
general eastern agent?
A. Yes.
Q. And he remained as assistant general traffic manager up to
hat time?
A. March 1, 1902.
Q. The general traffic manager being Mr. Stubbs?
A. When Mr. Hawley was appointed assistant general traffic
352 manager, Mr. Richard Gray was general traffic manager at San
Francisco.
Q. When did Mr. Stubbs become general traffic manager?
A. He was general traffic manager when I came with the company,
think. I would not be sure about that.
Q. Mr. Gray is not living, is he?
A. No.
Q. And Mr. Hawley is not living?
A. No.

Q. Did Mr. Hawley ever tell you of any efforts which he had m
to get a coordination between eastern roads and the Union Pacif
Central Pacific for through service via the Ogden gateway?

A. No.

Q. The first railroad to get a coordination with eastern roads f
through freight between the Atlantic and Pacific coast was the S
Fe, was it not?

A. I am not sure about that. I expect they think so.

Q. Do you bear in mind any instance of anything of the kind pr
to the through-route arrangements made between the Atchison a
the Erie, to which Mr. Chambers has testified?

A. I have no recollection of anything prior to that.

2353 Q. You have spoken of the falling off in the Sunset-G
route's business. Am I right in understanding you to mea
relative and not an absolute falling off?

A. No; an absolute falling off; an absolute decline in tonnage, n
withstanding an increase in the total tonnage.

Q. What was the maximum Sunset-Gulf tonnage in any year; d
you know?

A. I do not remember it; no.

Q. How do you arrive at this statement that there has been a
actual falling off in tonnage?

A. From my recollection of the business from year to year.

Q. How much do you think it is now below its maximum?

A. I do not know, in figures; but it is very substantially below i
maximum.

Q. Is that true both of the eastbound and westbound?

A. Yes.

Q. That decline has come, in part, since the opening of the Pana
Canal, has it not?

A. Partly.

Q. And may be due, in part, also, to present general business con
tions?

A. No; the decline was substantially below the maxim
2354 before the canal ever opened, and before the present conditi
of business existed.

Q. By "substantially" you mean what?

A. Thousands of tons.

Q. Did the tonnage of the Sunset-Gulf route, speaking in absolu
and not in relative terms, decline before the Union Pacific-Southe
Pacific merger, so called, in 1901?

A. I could not say as to the tonnage. The percentage of the tak
ings of all lines very materially declined prior to 1901. I could n

whether the actual tonnage declined prior to that date, because total tonnage was expanding very rapidly, and the number of may not have been less, but its percentage of takings was very ch less.

Q. During the Southern Pacific-Union Pacific merger period, m September 1, 1901, approximately, to February 1, 1913, did the uthern Pacific Company continue its vigorous effort to get as ch as possible of the Atlantic seaboard-California tonnage via the nset-Gulf route?

A. So far as my knowledge of the situation is concerned, from any structions which I had myself, we did.

Q. You mean to include in that so far as your belief goes?

55 A. I do not know what instructions officers in California might have had from the director of traffic, who was the joint ficer of the Union Pacific and Southern Pacific.

Q. Have you anything to arouse any suspicion in your mind on at subject?

A. No. The Union Pacific had another route to southern Cali-rnia in 1905.

Q. You refer to the San Pedro, from 1905 on?

A. Yes.

Q. During that merger period were you the immediate head of e Atlantic seaboard solicitation?

A. Yes.

Q. Did you also have to do with the Union Pacific solicitation in e seaboard territory?

A. On behalf of the line west of Ogden.

Q. You had under you, in the Atlantic seaboard territory during at period, solicitors whose business was to solicit for the Sunset-ulf route?

A. Preferentially.

Q. The Union Pacific Company had solicitors in the Atlantic sea-oard territory whose business it was to solicit for the Ogden route preferentially?

356 A. The Union Pacific had an organization in New York, Boston, and Philadelphia which was exclusively Union Pa-ific. Its offices at Pittsburgh, Cincinnati, Chicago, Atlanta, Kan-as City, and St. Louis were joint offices of the Union Pacific and outhern Pacific.

Q. Perhaps I did not emphasize it sufficiently, but I meant to keep, or the moment, the distinction between the Atlantic seaboard ter-itory and the Middle West.

A. Oh!

Q. I was coming to the Middle West later.

So far as the Atlantic seaboard territory was concerned, there w a Union Pacific—if I may so call it—Ogden preferential organiz tion?

A. Yes.

Q. And the Middle West territory——

A. I would like to qualify that: It was an Ogden preferential o ganization to and from central California after 1905; it was a Sa Lake route preferential organization for southern California bu ness after that time, and had its own line to and from Oregon, a was not a preferential Ogden solicitor for Oregon.

Q. But was for northern and central California?

2357 A. Yes.

Q. In the Middle West territory, prior to 1901, for a dou or more years, the Southern Pacific Company had maintained soli tors whose business it was to get as much freight as possible to m by the Southern Pacific Company's long haul?

A. In some places.

Q. And for all points east of a line drawn from Toledo throu Danville, Terre Haute, or Indianapolis to East St. Louis; that eff meant the New Orleans gateway?

A. Preferentially.

Q. And the Texas gateways next?

A. Yes.

Q. In that same territory the Union Pacific maintained solicitor that is, in the Middle West territory?

A. Yes.

Q. And their effort, during that period before 1901, was direct toward moving the traffic as much as possible through Omaha a Ogden?

A. Yes; to and from central and northern California.

2358 Q. After the merger in 1901, the line of division in t Southern Pacific Company's solicitation which had run described, from Toledo to East St. Louis, was moved southerly easterly down to the Ohio River and points thereon?

A. Southerly to the Ohio River and easterly to and includ Pittsburgh and its environs and Buffalo and its environs.

Q. And to the south of that line the effort continued to be in fa of the Sunset rail route?

A. The preferential effort was in favor of the Sunset route, there had been instructions to work with their connections.

Q. Northerly of that line the preferential effort was via Om and Ogden?

A. Yes; to and from central California.

Q. That condition persisted during the period of the merger?

A. Yes.

Q. You were aware, were you not, at about the time of the unmerger, so called, in February, 1913, that the Attorney General had manifested an intention to bring proceedings to question the
2359 legality of the holding of the Central Pacific Railroad Company by the Southern Pacific Company?

A. Yes.

Q. One of the elements which entered into the solicitation of traffic, before the punitive or other enlightenments of the twentieth century, was the giving of rebates to a considerable extent?

A. I understand so.

Q. Has the policy of solicitation which you have just indicated as existing during the period of the merger continued unchanged so far as the Southern Pacific Company is concerned, since the unmerger?

A. With respect to California traffic, the same policy of solicitation has been pursued, except more actively and vigorously.

Q. How with respect to Atlantic seaboard and Middle West?

A. I am speaking of the traffic between California and the Atlantic seaboard and Middle West.

Q. Oh, I see. That is, you did not mean to distinguish between east and west bound traffic in that?

A. No.

Q. The steamship lines operating through the Panama
2360 Canal are, as to many points in interior California, dependent for delivery upon the Southern Pacific rails, are they not?

A. The large points of consumption in California are all reached by other rails than the Southern Pacific.

Q. Those other rails being what?

A. The Santa Fe and the Western Pacific; the Oakland, Antioch & Eastern, and the Northern Electric and the California Traction Company, and the San Pedro line.

Q. Many of the large industries in California are situated upon the rails of the Southern Pacific or Central Pacific Railroad, are they not?

A. Yes.

Q. I am now using it, as you understand, in the sense of being immediately upon those rails and not merely in the towns.

A. Oh, no; I thought you meant served by the tracks.

Q. I meant to ask you if many of the large industries in California were not situated immediately upon the Southern Pacific rails or Central Pacific rails, in the sense that they are reached by short sidings from those rails?

A. By "industries" I suppose you mean agricultural
2361 speaking in that sense. The eastbound products are agricul-
tural, chiefly. The westbound products are warehoused in the
large cities I referred to as served by the rails of the different lines.

Q. Do you not have large industries out in California that have
sidings? I mean, to a considerable extent.

A. The fruit-packing houses, or something of that sort, you mean?
There is not much manufacturing in California, you know.

Q. I do not mean to define the particular kind of industry or busi-
ness, but simply to find out what the fact is with respect to that,
whether there are considerable numbers of receivers or shippers of
large amounts of freight that have their own sidings or spurs from
the Southern Pacific or Central Pacific tracks?

A. There are not many shippers that are located in the large cities.
The fruit-packing houses, of course, are at interior points, and some
of them are served exclusively by the Santa Fe lines, and some of
them are served exclusively by the Southern Pacific lines, and some
of them exclusively by the Western Pacific lines, and some of them
exclusively by the San Pedro.

2362 Q. Very little by the Western Pacific, of that sort of things?

A. Well, at Stockton and large cities up in central California. We switch to all of those lines, of course; for them all on an equal basis.

Q. Have you before you now defendants' Exhibits 84 to 94?

A. I have.

Q. Are you the author of them? I do not mean are you the draughtsman, but are you the author of the ideas portrayed by the lines on them?

A. I think I can take the credit for them.

Q. Defendants' Exhibit No. 84 you intend as indicating particularly alternative routes between Chicago and Seattle?

A. And Tacoma.

Q. And Tacoma. Which of those two alternative routes became complete first?

A. Complete?

Q. Yes.

A. The line from Chicago to Omaha was completed before the line from Seattle to Tacoma.

2363 Q. By that do you mean that the line from Chicago to Omaha ends the necessary rail connection through to Seattle and was completed before the line was through from Chicago to Seattle over the Chicago, Milwaukee & St. Paul?

A. Yes.

Q. What section of the new through line over the Chicago, Milwaukee & St. Paul between Chicago and Seattle was the last link in that line to be constructed or acquired?

A. I am unable to tell you where the last link was built. The western end of the line, known as the Chicago, Milwaukee & Puget Sound, was the last part of the road that was built.

Q. Between what points have you last described?

A. Between St. Paul and Seattle.

Q. That is, you mean you do not know which portion of the tracks between St. Paul and Seattle was the last to be built?

A. No; my understanding is that they built both ways, and I do not know where they met.

Q. That was a new building, was it not?

A. Yes.

Q. Was that conducted by the Chicago, Milwaukee & St. Paul?

364 A. For their account, as I understand it.

Q. Do you know of their having any other line projected through that territory at the time that they built that section?

A. I do not.

Q. Did the Chicago, Milwaukee & St. Paul stop any existing competition or prevent the arriving of any immediately threatened competition, so far as you know, by completing the building of that line?

A. I do not know of the St. Paul having stopped any threatened construction by any other line. If you mean, did they stop the soliciting of traffic by the Omaha line and in lieu thereof soliciting by their long haul, I will say yes.

Q. About how many lines parallel, in the common sense, with the Chicago, Milwaukee & St. Paul are there between Chicago & Omaha?

A. Between Chicago and Omaha?

Q. Yes.

A. About five.

Q. Do you know whether or not there ever has been a substantial tonnage moving over the Chicago, Milwaukee & St. Paul to

365 Omaha and thence by Union Pacific and the other connections which you have shown in yellow on defendants' Exhibit No. 4 to Tacoma and Seattle?

A. My understanding is that there was, prior to the construction of its own line.

Q. How substantial was it, to your understanding?

A. Do you mean how much?

Q. Yes.

A. The relations of the Chicago, Milwaukee & St. Paul with the Union Pacific were such that they were expected to put forth an

effort to secure the traffic that way. There was a reciprocal ob-
ligation.

Q. A comparatively small portion of the Chicago-Seattle traf-
moved that way, did it?

A. I should say that the Northern Pacific would have come firs
possibly the Great Northern second, and the St. Paul-Union Paci
line third.

Q. Once for all, let me ask you: On all of these maps you hav
approached the subject from the standpoint of the line denoted i
green, have you not?

A. Yes; the yellow lines are connecting lines.

Q. On defendants' Exhibit No. 85 you indicate as the eas-
2366 ern terminus of the alternative of the Union Pacific throug
eastern connections—or at least the determining line—the At-
lantic seaboard points. What do you intend to indicate as the wes-
ern terminus of the haul for which the map supplies alternati
routes?

A. Portland, San Francisco, and Los Angeles.

Q. What do you mean to denote as the alternative route to Por
land, to the obviously direct route, the Oregon Short Line, and t
Oregon-Washington Railroad & Navigation Company?

A. The Southern Pacific via Roseville; the Southern Pacific v
San Francisco, and the steamship line of the San Francisco & Por
land Steamship Company; the San Pedro, Los Angeles & Salt La
Railroad, and the steamship line of the San Francisco & Portla
Steamship Company.

Q. Does Union Pacific freight to any extent, destined to Portla
Oregon, move via San Pedro, and by steamship to Portland?

A. It does not, because of the facilities afforded by the line west
Ogden, which are so excellent that they have no need to use the alte
native route.

Q. Would not the facilities afforded by the Oregon Short Line a
the Oregon-Washington Railroad & Navigation Company
2367 pretty influential to keep the Union Pacific from movi
traffic via San Pedro and boat line to Portland?

A. Yes.

Q. Is any route practicable for the Union Pacific to San Pedro e
cept the San Pedro route?

A. I have heard a great deal about citrus fruits from southern Ca
fornia moving via Sacramento and Ogden.

Q. And that is a substantial use, is it?

A. Substantial, so far as that freight is concerned.

Q. Is the route via the Oregon Short Line and the Oregon-Wa
ington Railroad & Navigation Company and boat to San Francisc

ine over which any substantial amount of through freight to San Francisco is moved?

A. No.

Q. Is the line from Ogden via San Pedro, and boat to San Francisco, a line over which any substantial amount of freight is moved?

A. No. I should like to add, to both of those answers, that both lines actively work for passenger traffic.

Q. You mean, by those inducements that are attractive, thrown out as to scenery?

A. And fried chicken.

Q. The San Pedro route is the one which was the subject
368 matter of a part of the Union Pacific merger case?

A. Yes.

Q. Where some contentions and replies thereto were made as to whether that had been acquired to prevent a competitive route?

Mr. BLAIR. I object on the ground that the record in the case and the decision of the court is the best evidence.

Mr. MCCLENNEN. I think the suggestion is one which can not be disputed.

By Mr. MCCLENNEN:

Q. On defendants' Exhibit No. 86 the green lines are what is popularly known as the Gould system?

A. Yes.

Q. Why is the line from Marshall to El Paso hatched?

A. Because it is under separate operation; but a very large block of its stock is owned by the Missouri Pacific.

Q. The termini within which you intend by this exhibit to show the alternative routes are St. Louis and California terminals such as Stockton, San Francisco, and Oakland?

A. And Sacramento and Marysville.

Q. The last link to be constructed in the alternative route
369 was the Western Pacific from Salt Lake City to the San Francisco terminals?

A. Yes.

Q. There was no other line threatened, so far as you know, through that territory when that line was constructed?

A. No; not to my knowledge.

Q. Defendants' Exhibit No. 87 you intend to have present alternative Santa Fe routes?

A. Yes.

Q. And the points that you emphasize are New York on the one hand and California terminals on the other?

A. Those are not the first points that I emphasize.

Q. What are the first?

A. The first are Chicago on the one hand and Stockton, Oakland, and San Francisco on the other, between which the Santa Fe operates its own complete line, and a line from Chicago to Pueblo which, in connection with the Denver & Rio Grande and Western Pacific, forms an alternative competitive route between Chicago and California terminals.

The second point is that the Santa Fe line from San Francisco and Oakland to Chicago in connection with the Erie Railroad to New York forms one through route, and the Santa Fe system to
2370 Galveston, in connection with the Mallory Steamship Line to New York forms an alternative through route in competition for the Atlantic seaboard traffic.

Q. Dealing with the first that you mentioned, first; that is, Chicago and San Francisco: The last link in the alternative route was the Western Pacific from Salt Lake City to San Francisco?

A. Yes.

Q. Dealing with your second next; that is, the routes between New York and San Francisco: The last link in the alternative route was the line from Texico to Galveston or Temple, making thus to Galveston?

A. Yes; but the Santa Fe had a route to Galveston prior to that through some point farther north—I think I can tell you what it is.

Q. Do you refer to the line from Newton, Kansas?

A. I think that is the junction.

Q. Coming down to Galveston?

A. That line was in operation in connection with the Mallory Steamship Line as early as 1886. It is not shown here, because this map is designed to show the lines now in use.

Q. What was the last link, then, in the San Francisco
2371 to Galveston Atchison route, as it first went through, so as to be usable in a practical sense as a line from San Francisco to Galveston and thence by the Mallory Line to New York?

A. The line via Newton, Kansas, was used for many years as a practical route.

Q. That was the link that completed that line, was it?

A. I am not sure what part of it was last built. The Atchison, Topeka & Santa Fe acquired the Gulf, Colorado & Santa Fe Line from Newton, Kansas, south in 1886. The line was there, I think, before that.

Q. Was it a competitor in transcontinental business?

A. Yes.

Q. The line from Newton, Kansas, to Galveston?

A. Yes; the Mallory Line-Santa Fe route has been a competitor for California business for many years, while the Texico Line has only been completed within recent years.

Q. Irrespective of whether it was Santa Fe ownership or other
wnership, what was it that first bridged the last gap so that the
eight could be moved through the Needles and thence on down to
alveston?

A. From and to what point in California?

Q. Well, I will say Mojave.

372 A. The Atlantic & Pacific, I think, was the last.

Q. That was the last thing built?

A. Yes. Let me see. Wait a moment. It would depend upon
hether this line from Newton, Kansas, south was in existence prior
1883. I don't know whether it was or not. If it is true that that
ne was not in existence prior to 1883, then the link from Newton,
ansas south was the last link.

Q. Was the Atlantic & Pacific competitive in any way with the
anta Fe when it was acquired by the Santa Fe?

A. That depends on the broad meaning of that word. The Santa
e had a line through Deming in connection with the Southern Pa-
ific, competing for transcontinental traffic.

Q. Did the Atlantic & Pacific ever operate before it was operated
y the Atchison, Topeka & Santa Fe?

A. I think so.

Q. Did it operate between the Needles and Mojave ever before it
as operated by the Atchison?

A. I am not sure about that, but my understanding is that—I do
ot know whether it was in operation there prior to its being operated
y the Santa Fe or not.

Q. What were the practical means by which the Atlantic
373 & Pacific could reach eastern points except over the Atchison,
when the Atchison acquired the Atlantic & Pacific from Mo-
ave and Needles; and by "acquired" I mean acquired the lease over
hat line?

A. I do not understand that the Atlantic & Pacific had any con-
ection east of Needles.

Q. On defendants' Exhibit No. 88 the Great Northern is the line
ith which you are dealing?

A. Yes.

Q. The western termini being Seattle, Portland, Astoria, and
Spokane?

A. Yes.

Q. The eastern termini on one proposition being Chicago, and on
he other proposition being these innumerable Atlantic seaboard
oints?

A. The eastern termini of the Great Northern road is not shown
s Chicago.

Q. I mean, in preparing this map to show alternative routes, one of the things that you intended to show was the Great Northern's alternative routes by connection to Chicago?

A. Yes; between Seattle, Astoria, and Portland on the west
2374 and Chicago, St. Louis, and Atlantic seaboard on the east.

Q. Dealing with the longer line—that is, from Seattle and the other western points to New York and the other eastern points—you intend to show three lines, one through Billings, one through Minneapolis and St. Paul, and one through Superior, Wisconsin, and boat lines to Buffalo and rail to New York?

A. Yes.

Q. Which was the first of those three that was a through service able line, say, from Seattle to New York?

A. The Great Northern, Burlington, and Pennsylvania lines via St. Paul and Chicago, according to the best of my recollection.

Q. Which was the second?

A. I think the Superior line.

Q. And then the third was the one through Billings?

A. The one through Billings.

Q. What was the last link in the line through Superior?

A. I do not know.

Q. What was the last link in the line through Billings?

A. I think the line from Omaha to Billings.

Q. That is, the Burlington's line?

2375 A. The Billings route, at all events; possibly the Great Northern line from Shelby down to Billings may have been. It was all about the same time.

Q. That is, the completion of that through route was the work of the Burlington Railroad?

A. The completion of the through route?

Q. Yes; through Billings.

A. As far as I know; yes.

Q. Was any other line immediately projected at the time the Burlington built the line to Billings?

A. I have no knowledge of any.

Q. And, of course, you did not mean to convey the impression that the completing of a line by the Burlington to Billings would be a suppression of competition by the Great Northern Railroad?

A. I do not know what the Burlington does as between its line to Billings and its connection which owns it.

Q. Do you know anything about the movement of traffic from Seattle through Superior and boat lines and the New York Central to New York?

A. Yes. During the season of lake navigation traffic moves that way freely.

2376 Q. Is the volume large?

A. I think so.

Q. On defendants' exhibit No. 89 the prominent line is the Chicago & North Western?

A. Yes.

Q. And you intend to show three possible routes which it has, by connection between Chicago and Washington and Oregon points?

A. Yes.

Q. Which was the first one that was completed?

A. I don't remember whether the line from Chicago to Council Bluffs or the line from Chicago to St. Paul was first built. It is a matter of record, of course, but I do not recall it.

Q. Well, the first completion of the through line was made by the developments in Oregon or Washington, was it not? That is, the Oregon-Washington Railroad & Navigation Company's extension from Portland?

A. Yes.

Q. Going next to the line which starts out through St. Paul from Chicago; what completed the through line?

A. The Great Northern.

2377 Q. Is the same true of the line which starts out from Chicago through Ashland?

A. The Northern Pacific completed that route.

Q. And of course you do not mean to suggest that the completion of through routes by the Great Northern or the Northern Pacific would be a suppression of competition by the Chicago & North Western?

A. No.

Q. Defendants' Exhibit No. 90 is designed to emphasize the alternative routes of the Rock Island?

A. Yes.

Q. By its connections?

A. Yes.

Q. And whenever we say "Rock Island" we mean, unless otherwise indicated, the Chicago, Rock Island & Pacific Railway Company, plus the El Paso & Southwestern and El Paso & Southeastern?

A. It will be so understood.

Q. What are the termini betwen which you intend to show the alternative routes by this exhibit?

A. First, between Chicago & St. Louis and between Atlantic
2378 seaboard territory on the east, and San Francisco, Oakland, Sacramento, and Stockton, California, on the west.

Q. Dealing with the Atlantic seaboard on the east and California terminals on the west, which of these routes that you have shown here was the first physically complete?

A. I could not say as between the New York Central and Pennsylvania on the east and the Southern Pacific on the west.

Q. I have misled you again by the form of my question, I am afraid.

Over which of these alternative routes that you show on this plat did the Rock Island, by connection, first close up the last link of the chain connecting New York and San Francisco?

A. Between Chicago and Council Bluffs.

Q. That is, when the Rock Island built from Chicago to Council Bluffs it completed the first?

A. Yes.

Q. And that meant the use of the Union Pacific from that point west?

A. Yes.

Q. What was the next of these alternative routes?

A. The line from the Missouri River to Colorado junction.

2379 Q. That is the line from Council Bluffs to Pueblo?

A. Yes.

Q. And Denver?

A. Yes.

Q. Do you know whether any line was immediately threatened when that gap was closed by the building of that line?

A. I do not.

Q. And the third route that you suggest is the route through Tucumcari, is it?

A. Tucumcari and Santa Rosa.

Q. What was the last link to make that a through route from New York to San Francisco?

A. The southwestern end of the Rock Island line, connecting at Santa Rosa with the El Paso & Northeastern, it was at that time is now the El Paso & Southwestern.

Q. Do you know whether any other road was threatened at that point at that time?

A. I do not.

Q. Exhibit No. 91 you intend to show the alternative routes by connection of the so-called Burlington route, the Chicago, Burlington & Quincy?

A. Yes.

2380 Q. And the points are Chicago and St. Louis on the east and Pacific coast points on the west?

A. Yes.

Q. The last of those alternative routes to be completed was the uilding of the Burlington to Billings?

A. That is my recollection.

Q. And the first——

A. Was between Chicago and Council Bluffs.

Q. Was between Chicago and Council Bluffs, and that was com-leted by the extensions into Oregon?

A. What do you mean by "extensions"?

Q. Extensions of the lines of other carriers, not Burlington, into Oregon?

A. Yes.

Q. The only line which the Burlington finally completed the last ink of was this line to Billings?

A. That is the last line that was constructed, according to my un-erstanding.

Q. And, so far as you know, no other line was threatened through here at the time that was completed?

A. I have no knowledge of any.

Q. Defendants' Exhibit No. 92 is designed to show the 381 alternative routes of the Pennsylvania Railroad from Atlantic seaboard points to California points?

A. From Pittsburgh and Atlantic seaboard territory to California oints.

Q. The completion of the alternative routes there was put through y the connecting routes and not by the Pennsylvania?

A. Yes.

Q. Mr. Blair questioned you as to some resemblance between the ennsylvania situation in reference to Pittsburgh with the Central acific situation. Do you have in mind the incident?

A. Yes.

Q. I do not bear in mind just what the comparison was. Will you escribe it?

A. That the Pennsylvania lines have one route from Pittsburgh, ia Chicago, engaged in the transcontinental traffic, and a completely lternative route from Pittsburgh, via St. Louis, engaged in the same affic.

Mr. BLAIR. That may have been what the witness understood me o mean, but I had reference to an entirely different situation. How-ever, it is all the same.

382 By Mr. MCCLENNEN:

Q. In seemingly assenting to Mr. Blair's proposition, this as what you understood him to mean, as you have now stated it?

A. I would like to have his question and my answer before me.

Mr. BLAIR. You will find that my question related to the relati of the Pennsylvania, considering its line from Chicago to New Yo and the Sunset-Gulf route from New York to California; wheth that was not exactly analogous to the position created by the Centr Pacific line from Ogden to San Francisco and the Sunset-Gulf rou to New York; one presenting the same situation on the east as th other presented on the west.

By Mr. MCCLENNEN:

Q. Well, now, calling your attention to page 2246 of the recor keeping in mind Mr. Blair's explanation of what he meant by th question, will you not put in your own words, comprehensively, th comparison?

A. Well, Mr. Blair's question, as I now understand it, did not rel to transcontinental business. As I now understand it, it r
2383 ferred to the Pennsylvania line having its own line betwe New York and St. Louis——

Mr. BLAIR. I have never mentioned St. Louis, Mr. Spence.

The WITNESS. Will you let me read the question?

(After reading the question from the record.) Oh, yes; I s The Pennsylvania line between Chicago and New York is the Centra Pacific.

Mr. BLAIR. On the east?

The WITNESS. On the east.

By Mr. MCCLENNEN:

Q. That is, the Pennsylvania line between Chicago and New Yor you analogize to the Central Pacific?

A. Yes.

Q. Now, having established that, what do you analogize to th Southern Pacific to make the comparison?

Mr. BLAIR. The Southern Pacific was used——

Mr. MCCLENNEN. One moment. I want Mr. Spence to answer.

The WITNESS. The Sunset-Gulf route.

By Mr. MCCLENNEN:

Q. The Sunset-Gulf route?

A. Yes.

Q. That is, you mean that substituting Chicago for Ogden
2384 and New York for San Francisco you then use as the alterna tive the Sunset-Gulf route? Is that it?

A. Yes.

Q. That is, for the purposes of comparison you are assuming that the Pennsylvania lines from Chicago to New York and the Sunset-Gulf route are both owned by some company that we will cal the "X. Y. Company"; is that it?

A. That the X. Y. Company has an interest in both lines.

Q. The distinction between the two cases which you make analogous in your comparison being that in the case of the Central Pacific and the Sunset-Gulf route the Southern Pacific Company owns both of them and that in the other case the X. Y. Company does not exist at all; is that it?

A. The X. Y. Company is used as an example for comparison.

Q. I see. Mr. Spence, had this comparison that Mr. Blair called to your attention on page 2246 occurred to you before he mentioned the comparison at that time?

A. I do not know what he refers to.

Q. Had the comparison which you thought he referred to when you answered the question occurred to you before that time?

A. Yes; I prepared the map to show what I thought was
2385 comprehended by his question.

Q. And when you answered the question on page 2246 of the record you had in mind the Pennsylvania routes made by connection, the one through Chicago and the other through St. Louis, from Pittsburg to California?

A. Yes; that the lines between New York and Chicago, on the one hand, and the line from New York to St. Louis, on the other hand, formed parts of alternative competitive through routes.

Q. Now that you have had an opportunity to consider Mr. Blair's comparison, as you now understand that he meant it, from the explanation that he has given this afternoon, what do you think of it as a comparison representing your views?

A. He does not seem to think I understand his question yet.

Q. And the comparison, as he put it before you, is not so clear and obvious that you have yet got hold of it; is that it?

A. I have my own idea of this kind of a comparison, but have no idea of what Mr. Blair has in mind or what his question means.

The comparison that I made with your X. Y. example you
2386 stated for me—that if the same company had a route from New York via the Sunset-Gulf route to San Francisco and had an interest in another route between New York and Chicago it would be like the Central Pacific-Southern Pacific case.

Mr. BLAIR. You have got my idea at last, Mr. Spence.

By Mr. MCCLENNEN:

Q. Does the comparison, now that I understand from Mr. Blair's comment that you have got the idea he intended to convey, seem to you an accurate comparison from the standpoint of a practical railroad traffic official?

A. Yes.

Q. Now, to avoid doing you any injustice, will you restate, in yo
own language, the comparison which you have just described,
seeming to you a valuable one from a practical standpoint? Wh
is it?

A. If one company or interest had a line from New York to Ch
cago, and the same company had an interest in a line, a Gulf a
rail line, between New York and San Francisco via Galveston, th
we would have a parallel case to the Southern Pacific and Centr
Pacific.

Q. That is, you mean that if the Pennsylvania Railroad, having
line from Chicago to New York, with connections to San Fra
2387 cisco, should acquire a water and rail line from New York v
the Gulf of Mexico, and thence by rail to San Francisco, th
you would have a condition analogous to the one that we have i
the case of the Central Pacific Railroad?

A. Yes.

Q. The difference between the case on trial and that one bei
that the Pennsylvania Railroad has not yet acquired that line by t
Gulf? Is that the distinction?

A. I have no knowledge of what the Pennsylvania has acquired.

Q. You are not, from your general knowledge of traffic condi
tions, aware of the Pennsylvania Railroad having any such Gu
and rail line?

A. No.

Q. Defendants' Exhibit No. 93 you have prepared to show th
alternative routes which the Baltimore & Ohio Railroad has by co
nections from Philadelphia, Washington, and other Atlantic se
board points to California points?

A. Yes; and Pittsburgh.

Q. Had the lines of the Baltimore & Ohio which you have show
on the map reached Chicago and St. Louis before there were throug
rail connections to California?

A. I do not recollect.

2388 Q. You recall that the Baltimore & Ohio Railroad was th
first railroad in the United States?

A. I do not think it had reached Philadelphia. I think it wa
built originally from Baltimore.

Q. Built to what point?

A. I do not remember.

Q. Which of these alternative routes that you have outlined ha
was the first to be a through route by connection from the Atlantic t
the Pacific?

A. I do not think either of them can be described accurately in
answer to that question, because they are made up of links, some o
the links in one having been built before some of the links in

other. For example, the Illinois Central between Chicago and Council Bluffs was not built until after the Missouri Pacific west of St. Louis. On the other hand, the Southern Pacific west of Ogden was built before the Western Pacific west of Salt Lake City.

Q. The Baltimore & Ohio, by some connections to Chicago, if not over its own rails, reached Chicago and reached St. Louis before either of the lines here shown as west of Ogden and Salt Lake had been completed?

2389 A. I am not sure whether it had reached both Chicago and St. Louis or not.

Q. The second of the two alternative routes which you have shown here to be completed was completed by the construction of the Western Pacific?

A. Yes.

Q. And, of course, you did not mean to intimate that the construction of the Western Pacific was a suppression of competition by the Baltimore & Ohio?

A. No.

Q. Do you recall any of the routes which you have set out in defendants' Exhibits 84 to 93, inclusive, which we have just been going over, in which the last link in the second or third alternative line was acquired by the capture of an existing competitive line over that section, or was acquired or constructed to prevent the construction or acquisition by a competitor of a line or threatened line?

A. No.

Q. If in 1899, after the act had been passed directing the President to institute foreclosure proceedings on the Central Pacific Railroad line unless an adjustment of the debt was accomplished, that railroad had been sold to any concern other than the Southern

2390 Pacific Company, it would undoubtedly have competed strongly with the Southern Pacific from San Francisco Bay to New York, by connections, would it not?

A. As it does to-day.

Q. Passing to perhaps a little more fitting season for that part of your argument, I will ask you the simple question whether it would not in fact, irrespective of what it does to-day, have competed strongly against the Southern Pacific route?

A. As a purely academic question, the Central Pacific alone could not have competed with the Southern Pacific. The Central Pacific, joined with seventy-five per cent more mileage between Ogden and New York, would have completed a through competitive route.

Q. The Central Pacific Railroad, in the actual course of business under those circumstances, would, if managed as railroads ordinarily are managed, have tried to get business against the efforts of the Southern Pacific Company through El Paso?

A. It would have joined its efforts with the efforts of its connections, I have no doubt.

Q. To that end?

A. To that end.

2391 Q. You have, on defendants' Exhibit No. 94, sought to show the alternative routes of the New York Central Railroad from New York by connections to Los Angeles?

A. Yes.

Q. The New York Central Railroad acquired the West Shore Road, which you show here, the Michigan Central, which you show here, and the Lake Shore & Michigan Southern, which you show here, and some other roads not shown here, after those roads were already complete operating roads to the various points which you show on this plan?

A. As to all of them I could not speak from recollection.

Q. Well, you could as to the Michigan Central and the Lake Shore & Michigan Southern and the West Shore, could you not, which you show here?

A. That is my impression.

Q. This is the first of your instances on these various maps of the acquisition by a railroad of the control of the two existing competitive routes between the points which you designate, is it not?

A. As nearly as I can recall.

2392 Q. What is the analogy of any value which you draw between this New York Central situation and the Southern Pacific situation?

A. The New York Central lines between New York and Chicago and between New York and St. Louis, respectively, form parts of two alternative through routes.

Q. Does it seem to you that the situation is at all similar between the Southern Pacific Company and the New York Central?

A. No. The Southern Pacific Company does not own two parallel lines which in themselves compete with each other.

Q. So that really you make a distinction between the Southern Pacific and the New York Central rather than a comparison of the two as analogous; is that it?

A. They are analogous in the sense that they form parts of alternative through routes. It does not make any difference whether the New York Central uses the same line from New York and Buffalo or a different line. The lines from Chicago and St. Louis eastward form parts of different alternative through routes.

Q. And they form parts of through routes which are competitive routes in the New York Central case?

A. Yes.

2393 Q. And the same is true in the Southern Pacific case?

A. Yes.

Q. You were aware of the fact that the analogy between the New York Central situation and the Southern Pacific situation was such that a resolution had been introduced in the Senate inquiring as to why proceedings were not taken against the New York Central Railroad, were you not?

A. No; I do not remember the resolution.

Q. Were you not aware that a resolution had been introduced in the Senate inquiring?

A. Recently?

Q. Inside of a year and perhaps inside of six months.

A. No; I was not.

Q. Inquiring why proceedings were not taken against the New York Central Railroad?

A. No; it had escaped my attention.

Q. You have called attention in defendants' Exhibits Nos. 60 and 61 to the increase in through passenger trains since 1885?

A. Yes.

2394 Q. I suppose it is safe to say that the principal reason for the increase in the number of through passenger trains is the increase in the number of through passengers traveling between those points, is it not?

A. I am sorry to say that the increase in the number of passengers traveling between those points has not justified the increase in the trains.

Q. When they were put on, it was the belief that the increase in passengers was such as to call for the addition of the trains?

A. It was the belief that the increase would be sufficient to justify the operation of the trains.

Q. And the increase in the passenger travel through Ogden has not justified the through passenger service shown on Exhibit No. 61?

A. No; some of those trains have been losing money.

Q. Is the passenger travel via the routes shown on defendants' Exhibit No. 60 such as to call for the number of trains that are here shown?

A. They have been put on with the same object in view, and much with the same result.

Q. There has been some increase in travel through Ogden since 1885?

A. Oh, yes.

2395 Q. And it has been a very large increase?

A. Yes.

Q. And there has been a substantial increase in travel over the Sunset Route?

A. Yes. My point is that we have improved the service faster than the business has increased.

Q. Your map, defendants' Exhibit No. 56, in showing the lines on December 31, 1900, shows the lines substantially as they were in February, 1899, except for the Atchison road between Mojave and San Francisco; is that true?

A. And the American-Hawaiian Line, which did not begin operation until October 15, 1900.

Q. The lines in red on defendants' Exhibit No. 56 are lines controlled by the Southern Pacific Company?

A. Yes.

Q. The lines in green are pretty much all other railroads in the country?

A. The map does not show all of the railroads that are parties to transcontinental rates—transcontinental common tariffs. It is designed to include the principal railroads in the country that are participating in transcontinental traffic.

2396 Q. And it is true, is it not, that every one of the green lines except the Atchison, in order to get by rail into San Francisco, must forward over the red lines?

A. Every other line where? West of some point?

Q. West of Deming, New Mexico, and west of Ogden, Utah.

A. There were no other rails north of the Tehachapi Mountains on the date of that map except the Atchison.

Q. What was the condition in the traffic world with respect to the efforts of the Eastern and Middle West railroads to get traffic to move to or from California?

A. The lines described were soliciting the traffic either via Ogden and Southern Pacific, or via the Santa Fe through Chicago or Kansas City and Mojave.

Q. Was that solicitation vigorous?

A. Yes.

Q. As vigorous as it is now?

A. No. It was immediately prior to 1900, but not in the early nineties.

Q. I am referring to the condition in February, 1899.

A. Oh, in 1899?

Q. Was it then as vigorous as it is now, or not as vigorous?

2397 A. As to the question of degree, it was very active and vigorous. The competition seems more acute now by reason of the opening of additional lines and the Panama Canal.

Q. Was that vigorous effort by the Eastern and Middle West lines being made in February, 1899, in the West as well as in the East, or only in the East and Middle West?

A. In 1899? I think it was active and vigorous in both the Middle West and the East.

Q. Was the effort of all the other railroads to get traffic via the Atchison or via the Ogden gateway substantially as vigorous at the time of the Union Pacific merger in 1901 as it was in February, 1899?

A. Yes. You say "at the time." You mean prior to the merger, do you?

Q. I mean prior; yes.

A. Yes.

Mr. McENERNEY. What was the date of the merger?

Mr. McCLENNEN. September, 1901.

By Mr. McCLENNEN:

Q. You have produced, as defendants' Exhibit No. 58, a list of railroads maintaining solicitors in California?

A. Yes.

2398 Q. From what source did you make that up or have it made up?

A. From the Official Railway Guide.

Q. Was that made up from the current Railway Guide, so that it shows 1914 or 1915 conditions?

A. Yes.

Q. Did you make it up yourself, or merely give directions?

A. The California list was first made in California, and was checked in my office; each railroad was checked in my office.

Q. By some trusted subordinate?

A. Yes.

Q. Did you do the same thing with the New York list, defendants' Exhibit No. 59?

A. The New York list was made in my office.

Q. Was any attention paid, in making up the list, as to the number of solicitors that any one of these roads had in California?

A. No. The list is designed to show the number of organizations to have been forty-six, some of which have a number of solicitors.

2399 Q. Was any attention paid to the number of these forty-six railroads which combined into one soliciting organization in California?

A. No.

Q. It is obvious from your reading of the list, is it not, that some of those are joint offices of several different roads?

A. None, except those lines which are under the same ownership and control.

Q. Yes; but I say, from your knowledge of the railroads, you can say that there are a number of such, can you not?

A. The Gould lines and the Union Pacific system are about the only ones I observe.

Q. Now give me, will you, from this list of forty-six on defendants' Exhibit No. 58, the railroads, by name, which you characterize as the Gould lines represented by one organization or solicitor.

A. The Missouri Pacific, the Denver & Rio Grande, and the Western Pacific.

Q. Would you not add to that the Iron Mountain and the Texas & Pacific?

A. I would add the Iron Mountain. I do not think the
2400 Texas & Pacific are represented by the same agency. They are not usually.

Q. What are the lines represented by the single Union Pacific organization, as far as shown in this list of forty-six?

A. The Union Pacific, the Oregon Short Line, the Oregon-Washington Railroad & Navigation Company.

Q. And the San Pedro?

A. No; they maintain separate organizations.

Q. But not a competitive organization with the other Union Pacific organization?

A. No; they support the efforts of the Union Pacific to get southern California business.

Q. Are the New York Central lines and the Nickel Plate represented by one organization?

A. I think they are.

Q. Are the Canadian Pacific and the Soo Line represented by one organization?

A. They must be; they are under joint ownership.

Q. Are the Empire fast freight line and the Pennsylvania system represented by one organization?

A. No; I think the Empire is separately represented.
2401 Q. Those representations are not competitive with each other, are they?

A. The Empire line, you know, is not composed entirely of Pennsylvania lines. It is a mixture of Pennsylvania and New York Central lines. They are competitive to that extent.

Q. Are the Chicago, Burlington & Quincy and the Colorado Southern represented by one organization?

A. I think they are. I do not know.

Q. Of course the El Paso & Southwestern and the Chicago, Rock Island & Pacific are represented by one organization?

A. They are represented by separate organizations.

Q. They are represented by separate organizations?

A. Yes.

Q. Are the Queen & Crescent and the Southern Railway represented by one organization?

A. No.

Q. Referring to the list, defendants' Exhibit No. 58, the Atchison maintained a soliciting organization in California at the time of the Union Pacific merger in 1901?

A. Yes.

Q. Is the same true of the Baltimore & Ohio Railroad?

A. I think so.

2402 Q. Of the Canadian Pacific Railway?

A. I think so.

Q. Of the Chesapeake & Ohio Railway?

A. I think so.

Q. Of the Chicago, Burlington & Quincy Railroad?

A. Yes.

Q. Of the Chicago Great Western Railroad?

A. I think so.

Q. Of the Chicago, Milwaukee & St. Paul Railway?

A. Yes.

Q. Of the Chicago, Rock Island & Pacific Railway?

A. Yes.

Q. Of the Chicago & Alton Railroad?

A. I think so.

Q. Of the Chicago & Eastern Illinois Railroad?

A. Yes. That line was formerly part of the Rock Island, and my impression is that they may not have had separate representation at that time.

Q. Is it true of the Chicago & North Western Railway?

A. Yes.

Q. Of the Colorado Midland Railway?

A. Yes.

2403 Q. Of the Colorado & Southern Railway?

A. I am not sure whether they were joined with the Burlington at that time.

Q. And the Delaware, Lackawanna & Western Railroad?

A. Yes.

Q. Of the Denver & Rio Grande Railroad?

A. Yes.

Q. Of the El Paso & Southwestern?

A. I would not be sure that the El Paso & Southwestern separate organization had been created at that time.

Q. Of the Empire fast freight line?

A. Yes.

Q. Of the Erie Railroad?

A. Yes.

Q. Of the Grand Trunk Railway system?

A. Yes, I think so.

Q. Of the Great Northern Railway?

A. I do not think that the Great Northern opened its offices until recently. They have established their steamship lines from Seattle to San Francisco.

Q. Did they not have an office there for that purpose?

2404 A. Whether they had their own, or were represented by the Pacific Coast Steamship Company I am not sure.

Q. Is it true of the Illinois Central Railroad?

A. I do not think the Illinois Central had representation at that time. I am not sure about that.

Q. It has had for a great many years now?

A. Well, I will not say as to that.

Q. Do not understand me as referring to any other time. I refer only to 1901.

A. I do not know whether they had at that time.

Q. Recurring to 1901, the Kansas City, Mexico & Orient Railway was not in existence?

A. It was not opened for transcontinental traffic at that time.

Q. Did the Kansas City Southern Railway have an organization in California in 1901?

A. My impression is that it did not.

Q. Did the Lehigh Valley Railroad?

A. I think so.

Q. Did the Minneapolis, St. Paul & Sault Ste. Marie Railway?

A. That is a through line which was doubtless represented by the Canadian Pacific.

2405 Q. Did the Minneapolis & St. Louis Railroad, in 1901?

A. I do not believe so.

Q. Was that one of the Hawley lines?

A. Yes.

Q. Were they represented in some form by those lines?

A. I do not think they were.

Q. The Misouri, Kansas & Texas Railway, in 1901?

A. I do not know whether the M. K. & T. had an office at that time or not.

Q. The Missouri Pacific Railway?

A. Yes.

Q. The New York Central lines?

A. Yes.

Q. The Nickel Plate?
A. Yes.
Q. The Northern Pacific Railway?
A. I think so. I would not be sure about that.
Q. The Pennsylvania?
A. Yes.
Q. The Pere Marquette?
A. I would not be sure about that.
Q. The Queen & Crescent?
2406 A. I do not think the Queen & Crescent opened its California office until within the last three or four years.
Q. The Southern Railway?
A. I do not believe the Southern Railway had an office at that time.
Q. The St. Louis, Iron Mountain & Southern Railway?
A. They were represented by the Missouri Pacific.
Q. The St. Louis Southwestern Railway?
A. I should not think it had an office.
Q. The St. Louis & San Francisco Railroad?
A. Let me see when they opened. [After consulting memorandum.] I do not think they had. I do not think the St. Louis & San Francisco had an office.
Q. The Texas & Pacific Railway?
A. They either had a separate office or were represented by the Gould Lines' office. My impression is that the Texas & Pacific maintained a separate office.
Q. The Toledo, St. Louis & Western Railway?
A. I do not think so.
Q. The Wabash?
A. My impression is that the Wabash did.
Q. By 1908 practically all of the lines shown on Exhibit
2407 No. 58, except the Western Pacific, had different organizations in California?
A. I do not think the Queen & Crescent had. My recollection is that its office has been established quite recently. I do not know whether there are any other exceptions or not, from memory, but I think the majority of them had.
Q. Recurring to defendants' Exhibit No. 50, your table of Atlantic seaboard organizations, it is true, is it not, that in a number of instances two or more of the railroads shown thereon are represented by a single organization?
A. In the same instances that I have named with reference to the other exhibits.
Q. Instead of asking you as to each one of these roads in turn, I will ask you to look down through the list of defendants' Exhibit

No. 59 and tell me any that did not have a soliciting office in Atlantic seaboard territory in 1901.

A. The El Paso & Southwestern was not even jointly represented at that time, because the Rock Island had not connected with it.

The Kansas City, Mexico & Orient.

The Kansas City Southern.

2408 The San Pedro, Los Angeles & Salt Lake Railroad.

The Western Pacific.

Those are the only ones that I can say definitely did not have agencies.

Q. The probability is that the remaining fifty-four did have?

A. I should say so.

Q. And the San Pedro representation now is the Union Pacific representation?

A. No; it maintains its own office.

Q. It maintains a separate office in New York?

A. Yes.

Q. The Western Pacific is the same organization as the Missouri Pacific?

A. As the Missouri Pacific and the Rio Grande.

Q. By 1908 the San Pedro and the El Paso & Southwestern had required a soliciting organization in Atlantic seaboard territory?

A. The San Pedro line had, and the El Paso & Southwestern had an office in New York in 1908.

Q. In 1899 was there any really important Panama route other than that made up of the Pacific Mail Steamship Company

2409 on the west?

A. Yes. Well, not on the west; I think on the east. The Panama Railroad was operating its own steamship lines in 1899.

Q. But the Pacific Mail Steamship Company was a necessary part of it?

A. On the west, I think.

Q. On the west?

A. Yes.

Q. And the Pacific Mail Steamship Company in one form or another had been subsidized by the transcontinental railroads?

A. It had not for many years.

Q. Did they not have in 1899 still in existence that gross revenue guaranty or the space-rental agreement?

A. In 1899?

Q. In 1899.

Mr. BLAIR. Counsel objects on the ground that if it is a contract in writing the contract is the best evidence. I believe those contracts are offered in evidence.

The WITNESS. I do not recollect as to the date. I should say from my memory that it was not in effect.

2410 By Mr. MCCLENNEN:

Q. It is a matter that you have not had occasion to look up?

A. I have not had occasion to look it up.

2411 Q. Have you before you defendants' Exhibits 82 and 83?

A. Yes.

Q. And the bond-aided map, defendants' Exhibit 55?

A. Yes.

Q. Is Sacramento freight included or excluded in bond-aided lines' freight?

A. Included.

Q. Is San Jose included?

A. Yes.

Q. Is Stockton included?

A. Yes.

Q. Are there any other substantial points included in the bond-aided figure?

A. It includes every point on that bond-aided line. This map does not show all the points.

Q. From your knowledge of the situation, what is there on that bond-aided section of large size in addition to Sacramento, Stockton, and San Jose?

A. Those are the important points.

Q. Is the Santa Fe to-day the strongest all-rail line in the field?

A. No. The Union Pacific Ogden route is the strongest

2412 line.

Q. The Santa Fe is next?

A. The Santa Fe is second.

Q. Does the Southern Pacific operate, with the Rock Island, as one continuous line from California to Chicago?

A. We operate very closely with the Rock Island. We cooperate with them very closely. We join in the operation of a through passenger train—two through passenger trains. We do not join in the operation of any through mail train or any through mail car. We do not join in the operation of through merchandise cars to points north of the Tehachapi Mountains, because the volume of the traffic does not justify it.

Q. What is there lacking to your describing the Southern Pacific-Rock Island operation from California to Chicago as one continuous through line?

A. I was seeking to show the differences, whatever they might be, between that route, in answer to your question, and the route through Ogden. The differences are that by the Ogden route we operate a

through mail train from Omaha to San Francisco on a schedule
two days two hours and ten minutes, and a through mail car on th
Overland Limited in two days four hours and ten minute
2413 We do not operate either by El Paso in connection with th
Rock Island. We do not operate through merchandise cars
central California via the Rock Island.

Q. When you use the term "one continuous through route" to d
scribe a route portions of which are operated by separate compani
what do you mean by that term?

A. I mean the joining in through passenger rates, in joint freig
rates, in through billing, and in through bills of lading. Those
should regard as the essential features to the operation of a co
nected continuous line. We do more. We operate the mail trai
as I have described, and a through mail car upon the fastest schedu
made, because you know the Government awards the mail to t
schedule, and we carry the mail. We join in joint advertising, as
explained a day or two ago. We also do that for the Rock Island.

Q. If I have followed your answer, you do all of the things whi
you regard as essential to that definition in your relation with t
Rock Island. Am I correct?

A. Yes.

Q. And in the sense of the essentials the Southern Pacific and Ro
Island operate one through line from California to Chicag
2414 A. In those essentials.

Q. One of the ordinary things to be expected where two ra
roads operate as one through continuous line is an effort on the pa
of each to get as much traffic as possible to travel over that line,
it not?

A. We do not do that with the Rock Island.

Q. And it does not seem to you, then, that it is one of the natur
things to be expected in the case of the operation by two compani
of one through continuous line?

A. It is not an essential.

Q. And in that particular, if that is in fact contrary to what yo
understanding is as to one of the attributes of one through continuo
line, then the Central Pacific or the Southern Pacific has not or d
not prior to 1901 operate with the Union Pacific as one through co
tinuous line?

A. The Southern Pacific did not solicit 100 per cent of the tra
continental traffic via the Ogden route.

Q. That is, the effort of the Central Pacific or the Southern Paci
Company in operating the Central Pacific was to induce as mu
freight as possible between California and points east or south of
line from Toledo to East St. Louis not to go by the Uni
2415 Pacific Railroad, but to go by the Southern Pacific Railro

A. The effort was to have the traffic that you have described go preferentially by the southern route.

Q. And therefore not to go by the Union Pacific?

A. That does not follow. If the business could not be secured for the southern route, and was in danger of going by the Santa Fe, it was actively solicited for the Ogden route.

Q. If the effort succeeded, the result was to have the traffic not go by the Union Pacific. That is true, is it not?

A. With respect to that particular traffic, which is a minor part of the whole.

Q. What do you mean by "that particular traffic"?

A. That which you have described east and south of the specified line.

Q. Are you, when you say it was a minor part, taking into consideration that I mean to include everything east and south, even to the Atlantic Ocean?

A. Yes.

Q. Do you regard ninety per cent of the California-Atlantic seaboard traffic as a minor part of the traffic?

2416 A. My answer was that the traffic to and from the territory which you describe represented a minor part of the total transcontinental traffic.

Q. You mean of the total transcontinental traffic of all railroads?

A. Of our railroad. I mean that the traffic from north and west of that line is heavier than from south and east of that line.

Q. In 1899 was that so?

A. It is so to-day, and I think it was so then. Manufacturing has been moving to the Middle West very rapidly in this country.

Q. And you think that in 1899 ninety per cent of the California-Atlantic seaboard traffic plus that amount of traffic which you carried via the Sunset rail route from Middle West territory, south and east of the line from Toledo to East St. Louis, should, fairly and calmly, be described as a minor part of the Southern Pacific Company's transcontinental traffic?

A. Yes; because I would have to describe the other as the major part.

2417 Q. Do you think that ninety per cent of the Atlantic seaboard-California traffic, plus what went from south of that line together, was substantially less than fifty per cent of what was carried through Ogden and El Paso together?

A. The Sunset-Gulf route never carried——

Q. No; I did not ask——

A. Wait a minute. I want to——

Q. Take my question and answer that, if you will. I want you to understand it fully.

A. But you are assuming something that I am not willing to assume.

Q. Let the question be read and answer, if you can, the question which I have put.

(The reporter repeated the pending question as follows:)

"Q. Do you think that ninety per cent of the Atlantic seaboard-California traffic, plus what went from south of that line together, was substantially less than fifty per cent of what was carried through Ogden and El Paso together?"

The WITNESS. I think that ninety per cent of the seaboard traffic of the character that could be handled by the Gulf route, plus that from the territory south of the line that you have described, would be less than fifty per cent of the total traffic handled by the Southern Pacific routes; but the Sunset-Gulf route never handled
2418 ninety per cent of the seaboard traffic.

By Mr. MCCLENNEN:

Q. What was the highest percentage that the Sunset-Gulf route did handle?

A. Of the total seaboard traffic I could not tell you. Of the New York City traffic it reached between eighty and ninety per cent.

Q. Have you any idea whatever of the percentage of the total Atlantic seaboard traffic to and from California it handled?

A. I think it handled the major part of it.

Q. Considerably the major part of it, did it not?

A. More than half.

Q. It handled the major part of the Pittsburgh common point traffic, did it not?

A. I do not think so.

Q. Have you ever investigated those figures?

A. Oh, I probably knew about them at the time. The Santa Fe was actively engaged in the Pittsburgh traffic.

Q. I mean the major part of the Southern Pacific's Pittsburgh traffic.

A. Oh! Of our own? I am inclined to think it handled
2419 more via New Orleans, from that particular territory than via Ogden.

Mr. BLAIR. What date are you speaking of?

The WITNESS. 1899.

Mr. MCCLENNEN. 1899; yes.

By Mr. MCCLENNEN:

Q. It handled as high as sixty-five per cent of the Central Freight Association territory traffic, did it not?

A. I never saw anything that would confirm that understanding.

Q. Have you ever investigated those figures with a view to determining what percentage it did carry?

A. I have not, in recent years; no.

Q. You knew that that was the opinion of at least some who were familiar with the Central Freight Association territory?

A. That would not make it my opinion.

Q. Could you put into terms of anything like a percentage how much of the Southern Pacific Company's transcontinental traffic did move via El Paso in 1899?

A. No.

Q. Would you be prepared to say that it was less than
2420 forty-five per cent?

A. From all territories?

Q. From all transcontinental territories.

A. I should think it was.

Q. Was it less than forty-five per cent of all Atlantic seaboard territory and Middle West territory, as you have heretofore defined it?

A. I should think so.

Q. Was it less than forty per cent?

A. Well, I could not get into definite terms. I do not know.

Q. The Southern Pacific Company tried to have that volume which we will call something less than forty-five per cent, and other freight as to which its efforts were not successful, go via the Sunset Route in preference to the Ogden route?

A. Its efforts were to have all of the traffic to and from the Atlantic seaboard territory and south of the Ohio River go by the Sunset Route if its efforts were successful.

Q. And to have it not go, in consequence, by the Union Pacific?

A. No; they did not want it not to go by the Ogden
2421 route, because they found it absolutely necessary to get a haul, very frequently, rather than to have it go to its competitor.

Q. That is, if they could not get it to go by El Paso, their desire not to have it go by the Union Pacific ceased, but up to that point the effort was to have it go not by the Union Pacific; is not that accurate and true?

A. If it could secure the business by the southern route to and from this territory we have described, its effort was not to have it go by Ogden if it could get it by the Sunset. Its effort after that was to secure it via Ogden.

Q. The effort which you have described was a systematic one, was it not?

A. Yes.

Q. It was a preconcerted one?

A. Yes.

Q. And it continued from the time you first knew about the ra road up to 1901?

A. Yes.

Q. And it still continues, except that the division line has be moved east and south from the line that you described from Tole to East St. Louis?

2422 A. Yes.

Q. In the movement of freight from San Francisco via Paso, does the larger part go by the coast line?

A. The lines are used interchangeably to suit the convenience operation. The matter is entirely in the hands of the operating offi to send the traffic south via either the coast line or the Central Paci Valley line or the other lines that are used there as interchanged routes.

Q. Is the coast line easier or harder in matter of grades than t line through Mojave?

A. Somewhat easier.

Q. How does the distance to the common point at Saugus compar

A. It is about the same, I should say.

Q. Do you know, as a matter of actual practice, at all, how t volume going by the one line compares with that going by the othe

A. No.

Q. Do any of the boats touching at Los Angeles have any prefe ential arrangement, as far as you know, with any of the railroads?

A. Not to my knowledge.

2423 Q. And none of them are affiliated with any of the ra roads?

A. That is, you mean boats running through the canal?

Q. Boats running through the canal and touching at Los Angel

A. No affiliation, to my knowledge.

Q. But the Atchison and the Mallory Line work preferentia with each other?

A. Preferentially with respect to the Gulf route; yes.

Q. Does that work both ways—the Mallory Line seeks the Atc son and the Atchison the Mallory Line?

A. Yes.

Q. They are independently operated and controlled, as far as known?

A. I could not say that they are independently operated and co trolled. It has been reported many times that the Santa Fe had interest in the Mallory Line. I do not know.

Q. You only know the rumors on the subject?

A. Yes.

Q. How does the Mallory tonnage capacity compare with your New Orleans and Galveston boats?

A. It is not as large.

2424 Q. What is your total capacity tonnage?

A. Oh! Capacity. I thought you meant tonnage carried.

Q. No; capacity.

A. I think our capacity is about 77,000 tons.

Q. Do you know what the Mallory capacity is, about?

A. Not quite as large. They have a combined fleet now, however, that they use interchangeably. The Atlantic, Gulf & West Indies Steamship Line owns the Clyde Line, the Ward Line, the Porto Rico, and the Mallory Line. All of those ships are available for the Galveston service from time to time as they may be needed.

Q. Do you know anything about the California tonnage carried by the Mallory Line?

A. No; I do not.

Q. How long has the Southern Pacific Company been confiding certain of its advertising funds to the Union Pacific Railroad Company?

A. It began during the merger and has continued since the unmerger.

Q. Did it begin away back in 1901, practically?

A. I do not think as far back as that; no. The system of

2425 joint advertising of two connecting lines, I think, was organized some time between 1901 and 1910 and the eastbound money put in the hands of the Southern Pacific Company to spend in eastbound advertising and the westbound money put in the hands of the Union Pacific Company to spend in westbound advertising. That is the practice to-day.

Q. Is that for freight and passenger business?

A. Only passenger. That advertises through train service.

Q. How does the time from Mojave, say, to Chicago for freight traffic over the Atchison compare with the time via El Paso and the Rock Island?

A. If you make that Los Angeles, I would say it is about the same.

Q. About the same from Los Angeles?

A. Yes.

Q. Is there any reason why the Southern Pacific and Rock Island together could not compete successfully with the Atchison for all California-Middle West and Atlantic seaboard business?

A. On all California business?

Q. Between the two; yes.

2426 A. It competes successfully with the Atchison for south
California. It might hold its own with the Atchison to c
tral California. It could not hold its own with the Ogden route.

Q. That is, from all parts of California to the Middle West and the Atlantic seaboard the Southern Pacific-Rock Island route ou to be able to operate on even terms with the Atchison.

A. It is 200 miles longer, according to my recollection, than Atchison.

Q. That is, for points north of Los Angeles?

A. No; it is 200 miles longer to Los Angeles.

Q. It is 200 miles longer there?

A. Yes.

Mr. McEnerney. Which is—the Sunset?

The Witness. The Rock Island line from Chicago.

By Mr. McClennen:

Q. The Rock Island is the shortest connection, is it not?

A. For the Southern Pacific El Paso route; yes.

Q. You have a gateway with the Rock Island now at Tucson, h you not?

A. Yes; with the El Paso & Southwestern at Tucson.

2427 Q. Does that shorten the route over the El Paso route?

A. No.

Q. Is it substantially the same?

A. About.

Q. Does it affect the divisions?

A. No; it does not affect the divisions east and west of El Pa

Q. Take, for example, from Chicago to San Francisco; do y divide in the same proportions with the Rock Island, whether t delivery is made at El Paso or Tucson?

A. No. The same division accrues east of El Paso, whether t traffic is handled west of there by the Southern Pacific or by t El Paso & Southwestern. The proportion west of El Paso is th subdivided between the El Paso & Southwestern from El Paso Tucson and the Southern Pacific beyond.

Q. That results in a somewhat lower division to the Southe Pacific if it comes to Tucson?

A. Yes.

Q. The possession of the initial or terminal lines is, as a practic matter, of substantial advantage in competition, is it not?

2428 A. If that line has been in the territory for a number years, and industries have built up around it and are serv by it, it is important.

Q. Should you think that the Central Pacific, viewed as a separa railroad, was in a better or a worse position than the Union Paci

Railroad, so far as competing with the Southern Pacific Railroad, if separate, in California, is concerned.

A. The Union Pacific is in a better position, because it has three arms extending, one to southern California, one to Central California, and one to the north coast.

Q. That was not so in 1899?

A. The Southern California line was not there in 1899.

Q. The Southern California line, meaning by that the San Pedro line, is not very practicable as a route for the Union Pacific for points north of Mojave?

A. It is not, under existing conditions, because of the short route west of Ogden. The same reasons operate to influence the Union Pacific to work the Central Pacific business by Ogden as influence the other lines to work the southern California business the other way; that is, the line by which they can give the best service.

2429 Q. The short line to Portland, under the conditions of railroading existing to-day, is not of great practical value as a means of access from Ogden or Granger to California for transcontinental freight, is it?

A. It does not carry any substantial freight traffic, if any, via Portland to-day.

Q. And it would not compete on anything like even terms with a direct road from Ogden or Salt Lake to California?

Mr. BLAIR. Counsel desires that this question should go in subject to their plea of estoppel and to the evidence in support of the estoppel which they have now entered, based on the contentions of the Government in what we have referred to as the Union Pacific merger suit.

(By request, the reporter repeated the pending question as above recorded.)

The WITNESS. I should say that it could fix the terms for the other route.

By Mr. MCCLENNEN:

Q. You mean by that, that the presence of that reserve would put the Union Pacific in a position to see that the direct route did not seriously overreach it in the matter of terms?

2430 A. Yes.

Q. And that is all that you mean, is it not?

A. Yes; I mean that the Portland route is there as a rate-making factor.

Q. Now, apart from the possession of the San Pedro route and the Portland route, has the Union Pacific, in your mind, any better com-

petitive chance with the Southern Pacific than the Central Pacific alone would have?

A. Yes.

Q. What other element is there giving the Union Pacific a better chance than the Central Pacific?

A. The support of the Southern Pacific lines in California.

Q. Is there any reason to suppose that the Central Pacific lines would not have as much support from the Southern Pacific lines as the Union Pacific now gets?

A. I do not know why it should have.

Q. As a matter of practical railroading, would it not be to its interest to further the Central Pacific traffic?

A. I do not know why the Southern Pacific would not be just as glad to handle the traffic to Stockton and Sacramento and de-
2431 liver it to the Western Pacific as to deliver it to the Central Pacific. The revenue would be the same.

Q. Is there any reason to suppose that it would prefer the Western Pacific to the Central Pacific?

A. No. What the Central would lose is the absolute support that it has from the Southern Pacific to-day on the major part of the Calfornia traffic.

Q. Would not the Southern Pacific, as a matter of practical railroading, desire the support of the Ogden route, and naturally reciprocate so as to get it?

A. What else would the Ogden route do with the traffic?

Q. Do you mean by that that the Ogden route would have to deliver it to the Southern Pacific Company?

A. I mean that it would not be likely to deliver it to the Santa Fe and it would not be likely to deliver it to the Western Pacific.

Q. Why not?

A. The Western Pacific is a parallel line.

Q. It would not need to deliver it at those points where they are parallel, would it?

A. Where what is parallel—the Western Pacific?

Q. Yes.

A. It might deliver the Marysville business, for ex-
2432 ample, to the Western Pacific.

Q. Do you think that the Central Pacific would naturally deliver to the Western Pacific for Marysville rather than to the Southern Pacific at Roseville for Marysville?

A. I would not want to enter the field of speculation to that extent. I would like to have somebody tell me what the Central Pacific would do under those circumstances. I do not think any man knows. It would revolutionize the map.

Q. The Southern Pacific rails are the important terminal rails in California for the Ogden route, so far as it is not reached by the Central Pacific Railroad itself, are they not?

A. Yes.

Q. Do you not think that it is probable that the Ogden route, so far as it could not reach destinations over the Central Pacific's own rails, would naturally use the Southern Pacific's rails?

A. I do not know why, if there are other rails reaching the same points.

Q. You have no reason to think that they would not, have you?

A. Suppose the Southern Pacific adopted a policy of neu-
2433 trality between the Central Pacific and the Western Pacific in hauling this business up to junctions and getting the same revenue; the Central Pacific would not be under any reciprocal obligation to the Southern Pacific.

Q. That is, in a sense the Western Pacific and the Atchison and the Southern Pacific would be competitors for the delivery of Central Pacific freight?

A. Yes. They are to-day.

Q. The relation of the Union Pacific to the situation north of Mojave, in California, is much the same that the Central Pacific's situation would be, is it not?

A. No. The manifest interest which the Southern Pacific has in securing the haul to Ogden is the thing which protects the Union Pacific.

Q. You mean, you think that a dissolution between the Southern and the Central would not operate in any way to the advantage of the Union Pacific?

A. I do.

Q. You do not think that the Union Pacific would be put in any stronger position by such a dissolution?

A. No.

Mr. BLAIR. You do not mean, by the dissolution, the Union
2434 Pacific getting the Central Pacific, do you? I think it is fair to the witness that he should know what you mean by that.

Mr. MCCLENNEN. Well, it had not occurred to me that there was any doubt about what I meant.

By Mr. MCCLENNEN:

Q. What did you understand me to mean, in answering, Mr. Spence?

A. I understood you to mean the Central Pacific as a separate and independent line.

Mr. BLAIR. That is what you did mean, was it?

By Mr. McCLENNEN:

Q. And in answering, you answered on that assumption?

A. On that understanding; yes.

Q. The Central Pacific is to-day in an advantageous position in competition by reason of having Southern Pacific terminal lines to deliver over and obtain freight from?

A. Yes.

Q. The Union Pacific does not, so far as California is concerned, have the advantage of possessing any terminal lines north of Mojave in California, does it?

A. No.

2435 Q. The Central Pacific, with the Southern Pacific, is in a more influential position, in consequence of those terminal lines, than the Union Pacific in the matter of California transcontinental business, is it not?

A. The Union Pacific derives practically all of the benefits of the advantageous position that the Central Pacific occupies by being joined with the Southern Pacific to-day.

Q. The Union Pacific receives, you mean by that, the advantage of such freight as does move through Ogden over the Central Pacific?

A. And the advantage of the Southern Pacific's support in securing that traffic.

Q. To the extent that the Southern Pacific is not seeking to get it the other way, via El Paso?

A. Naturally.

Q. In that sense the welfare of the Union Pacific is dependent upon the attitude of the Southern Pacific toward the respective gateways? Is not that true?

A. To the extent of the solicitation of the Southern Pacific via other gateways, it is.

Q. That is, so long as the Southern Pacific deals with the Union Pacific in the effort to advance the business that will pass over

2436 the Union Pacific, the Union Pacific is, by so much, advantaged?

A. That effort is guaranteed the Union Pacific so long as the Central Pacific is under the control of the Southern Pacific by its very ownership.

Q. And the Union Pacific is dependent upon the existence and continuance of that effort?

A. It is dependent upon the Southern Pacific making the effort that it is to its own interest to make while it has the Central Pacific.

Q. And that effort of the Southern Pacific is diminished just by so much by its ambition to get as much as possible via the El Paso route?

A. Which is a very limited diminution.

Q. By saying it is a very limited diminution you intended to answer the question rather in the affirmative, with that limitation, did you not, than in the negative?

A. I intended to answer the question in pursuance of the statistics that are on record.

Q. You intended to assent, did you not, to that effort in favor of the Union Pacific being to some extent diminished by the desire of the Southern Pacific to get freight by El Paso?

2437 A. To that extent.

Q. The Central Pacific, if not connected with the Southern Pacific, would be actuated, naturally, by the desire to move all the freight possible through Ogden, would it not?

A. I should think so.

(Whereupon, at 6.30 o'clock p. m., an adjournment was taken until to-morrow, Saturday, April 24, 1915, at 10.30 o'clock a. m.)

2438 TWENTY-NINTH DAY.

ROOM 2506, 165 BROADWAY,
New York City, Saturday, April 24, 1915.

The hearing was resumed, pursuant to adjournment, at 10.30 o'clock a. m., before Frank R. Hanna, special examiner.

Present on behalf of the United States: James W. Orr, Esq., Edward F. McClennen, Esq., and Edward E. Gann, Esq., special assistants to the Attorney General.

Present on behalf of the defendants: W. F. Herrin, Esq., J. P. Blair, Esq., and Garret McEnerney, Esq., for the Southern Pacific Company.

2439 LEWIS J. SPENCE, the witness under examination at the taking of adjournment, resumed the stand and testified further as follows:

Cross-examination (continued) by Mr. MCCLENNEN:

Q. Mr. Spence, yesterday, at page 2331 of the record, you gave 90,000 tons as the eastbound tonnage delivered by the Southern Pacific to the Atchison, destined to points east of Albuquerque?

A. Albuquerque; yes.

Q. Did that include the tonnage originating on the industrial tracks of the Southern Pacific Company in and about San Francisco?

A. No.

Q. Could you give any idea of what part of the State this 90,000 tons originated in?

A. No.

Q. That is, how it was distributed among the parts of the State, I will say.

A. No; I have no distribution of it.

Q. In your direct testimony, at page 2112, you state that the
2440 line from Tehama to Roseville, Brighton, Stockton, and Lathrop of the Central Pacific, forms the shortest line of the Sunset Route, between Oregon and northern California, and points south and east.

You, of course, mean between Oregon and northern California, on the one hand——

A. On the one hand.

Q. (Continuing.) And points south and east on the other hand?

A. Yes.

Q. The alternative route, if you confine yourself to Southern Pacific rails, is through Davis and via the Benicia cut-off?

A. Yes.

Q. On page 2113 you say the line of the Central Pacific from Lathrop to Goshen is part of an alternative route from points north of Lathrop, as well as from Oakland and San Francisco, to points south and east.

If you disregard the freight having origin or delivery between Lathrop and Ogden, that portion of the line is not the best of the Southern Pacific routes for San Francisco and Oakland business, is it?

2441 A. I think so. It is the line that is chiefly used. It is the line over which the passenger service is routed.

Q. Is not that pasenger service routed that way for the purpose of serving the local points on the line rather than for the advantage to San Francisco and Oakland when dealing with points south of Goshen?

A. It is routed that way, the trains are operated that way, as an operating convenience to avoid congestion by concentration on those lines and by operating in that way all of the points on that line north of Goshen Junction are given a through service, given the benefit of the through service to southern California, which they would not otherwise have.

Q. If you were leaving out of consideration the places between Lathrop and Goshen, the more natural line from Oakland and San Francisco to points at Goshen and south would be via Tracy and Ingle, would it not?

A. I would not regard it as a more natural line.

Q. The mileage from Oakland to Goshen would be no more?

A. I think it would be no less.

Q. Than by Ingle?

A. I think it would be no less.

Q. You think it would be about the same?

2442 A. My impression would be that the mileage would be about the same.

Q. What places of importance are there between Goshen and Mojave, if any?

A. Between Goshen and Mojave?

Q. Yes.

A. The stations in the oil section are the most important, Famosa, Oil City, and Bakersfield; and the line served from Bakersfield by a branch.

Q. Are they important for the outgoing oil traffic or have they a large tonnage otherwise because of the oil industry?

A. They have the inbound tonnage that is incident to the oil industry, and they have the passenger traffic of the oil industry that must be served in and out.

Q. What are the large oil concerns there?

A. I could not begin to enumerate them by name.

Q. For points south of Saugus the coast line from San Francisco and Oakland is, if anything, an easier route than the line through the San Joaquin Valley and over the Tehachapi, is it not?

A. Yes.

Q. Since I asked you about the comparison from Tracy to

2443 Goshen via Lathrop or via Ingle, have you looked up and found that the mileage from Tracy to Goshen via Lathrop is 241 miles, and the mileage from Tracy to Goshen via Ingle is 247 miles?

A. Yes.

Q. On page 2134 of your direct examination you refer to the arrangements that have prevailed for through rates and divisions with other transcontinental lines. That means, so far as anything north of Mojave is concerned, the Atchison and the Western Pacific, does it not?

A. Yes.

Q. Exclusively? There are no other lines?

A. No.

Q. Has the Atchison arrangement been uniform since 1885 or so?

A. I can not say as to 1885. For many years, within my recollection, it has been uniform.

Q. Without going into precise figures, what is the method of arriving at the divisions on Atchison freight which you short-haul and deliver at California junctions, to the Atchison, or that you receive from the Atchison?

A. My understanding is that the divisions were arrived

2444 at on the basis of what we call "constructive mileage", the short line taking something for its short service.

Q. That is, without going into precise figures, you divide on a mileage basis, and you call every mile of the short haul a mile and a half or two miles, or whatever fraction may be adopted?

A. That is the theory.

Q. The arrangement with the Western Pacific is a different arrangement, is it not?

A. No; it is exactly the same.

Q. The Southern Pacific and the Western Pacific also have a working agreement, have they not, by which the freight delivered by one to the other, destined to Ogden or Salt Lake or eastward, is divided as to rate, fifty-fifty, irrespective of the length which either line hauls?

A. No; the divisions between the Southern Pacific and the Western Pacific are that the Southern Pacific takes twenty-three per cent of the west of Missouri River proportion of the through transcontinental rate, which is the same percentage that it takes from Santa Fe; the same percentage that the Santa Fe and Western Pacific charge each other, and the same percentage that they charge

2445 the Southern Pacific for like service.

Q. Twenty-three per cent of the west of Missouri River proportion?

A. Of the west of Missouri River proportion of the transcontinental rate.

Q. Twenty-three per cent of the west of Missouri River proportion is one-half of the California-Ogden proportion of the California-Missouri River rate?

A. That is the effect of the calculation. I would like to add that the Western Pacific being a part of a system of railroads from the Missouri River and east thereof, we are not interested in that subdivision. That system of railroads is accorded exactly the same treatment as the Santa Fe.

Q. That is, whatever accrues west of the Missouri River to that river and that which accrues east of the river to the Santa Fe, that division is, as between the Southern Pacific Company and the Santa Fe, favorable to the Santa Fe when the Santa Fe has the terminal line, and favorable to the Southern Pacific when the Southern Pacific has the terminal line?

A. Yes.

2446 Q. Does that or does it not mean that when the Atchison from the east terminated at Mojave for all points north of Mojave the Southern Pacific received twenty-three per cent of the Missouri River rate for hauling to Mojave and the Atchison twenty-three per cent of the Missouri River rate for hauling from Mojave to the Missouri River?

A. No; the Atchison received seventy-seven per cent for hauling from Mojave to the Missouri River, if the Southern Pacific received twenty-three west of Mojave.

Q. On page 2161 in your direct examination you were asked this question, and answered as follows:

"Q. Prior to 1901 did the control or ownership of the Central Pacific lines by the Southern Pacific Company, the preferential solicitation and routing which was described, prevent competition between the Ogden route and the Sunset line or Sunset-Gulf route?

"A. It did not."

You meant by that, did you not, that the Union Pacific and the Iowa lines and the eastern lines were competing to get the traffic via Ogden and the Southern Pacific was competing to get the traffic via the Sunset-Gulf route?

2447 A. Yes; Atlantic seaboard traffic especially I had in mind.

Q. It applied, as you have elsewhere described, to a certain portion of the Middle West territory also?

A. A small portion on the east, as previously defined.

Q. Will you refer to one of the larger maps, say defendants' Exhibit No. 54, and state the important points in California north of Mojave which are on the Central Pacific rails or connected by ferry with them, and then state separately the important points north of Mojave which are not on those rails?

Mr. BLAIR. How far north of Mojave? Do you want the whole of California?

By Mr. MCCLENNEN:

Q. The whole of California north of Mojave.

A. You want those which are on the Central Pacific rails first?

Q. Yes; give those first.

A. Fresno, Madera, Merced, Stockton, Sacramento, Marysville, San Jose, Oakland, Red Bluff, Los Molinos, Redding, Dunsmuir, and, connected by ferry, San Francisco.

What was the other part of the question?

Q. Now, the important points in the whole of California
2448 north of Majave that are not on the Central Pacific rails or connected by ferry therewith.

A. Santa Barbara, Lompoc, Guadalupe, Betteravia, San Luis Obispo, Paso Robles, Salinas, Del Monte, Pacific Grove, Watsonville, Hollister, Santa Cruz; all suburban towns between Menlo Park and San Francisco, Berkeley, and all of the suburban towns on the Oakland-Berkeley electrified line; South Vallejo, Napa, Calistoga, Santa Rosa, Rumsey, Elmira, Davis, Fruto, Oroville, Placerville, Ione, Valley Springs, Milton, Swiss-Italian Colony, Ramond, Spreckels, Pajaro, Pollasky, Exeter, Porterville, Springville, Famosa, Oil City, Bakersfield, Olig, Kerman, Ingle.

All of those points mentioned are served by the Southern Pacific rails.

I do not know how I can begin to enumerate those that are served by other lines.

Mr. BLAIR. If you do not know them, say so.

The WITNESS. I am unable to enumerate those that are served by the Santa Fe and Western Pacific that are not reached by the Southern Pacific or Central Pacific.

By Mr. McCLENNEN:

2449 Q. Do you think of any sizable places that are served by the Atchison or the Western Pacific that are not served by the Southern Pacific? If so, what are they?

A. I do not think of any important places, because the Atchison and Western Pacific have come into the important towns that the Southern Pacific-Central Pacific system had reached.

Mr. HERRIN. There is Eureka and all that country.

By Mr. McCLENNEN:

Q. There is a section, is there not, as suggested by Mr. Herrin lying north of Santa Rosa and running up to Eureka, that is served by the Northwestern Pacific, which is a joint line of the Atchison and the Southern Pacific?

A. Yes. I should have added this: Susanville and Westwood should be included in the Central Pacific enumeration.

Q. Is there anything of importance between Mojave and the Nevada line on the Central Pacific?

A. On the south end of it there is a heavy movement of construction material, such as was used in the Los Angeles aqueduct. In fact the south end of the line was built to move material for the Los Angeles aqueduct.

2450 Q. Now, will you look at the list which you have given of the Central Pacific important points, which you began with Fresno and ended with San Francisco, and state which of those are not reached by Southern Pacific rails?

A. Red Bluff, Los Molinos, Redding, and Dunsmuir.

Q. On the list of non-Central Pacific points, those beginning with Santa Barbara and running down as you gave them through Santa Cruz are on the coast line of the Southern Pacific, are they not?

A. Yes.

Q. In this list the places named by you from South Vallejo to Davis lie northerly of San Francisco Bay or San Pablo Bay?

A. Yes; they are on the line extending from Benicia to Sacramento.

Q. The largest shipping centers are those which are on the Central Pacific list?

A. The largest shipping centers of transcontinental freight are not those on the Central Pacific list.

Q. What are the conspicuous shipping centers on the Southern Pacific list which are not on the Central Pacific list?

2451 A. Nearly all the beans shipped from California originate on the coast line, which I have named here, and stations which I have not included. The barley originates on that line; every station produces some, including stations which I have mentioned and some which I have not mentioned. Considerable of the asphalt originates on that line, and on the north end of it considerable fruit; and that business originates at, you might say, every station. Watsonville produces 5,000 carloads of apples every year—the Watsonville district.

Q. Is Fresno a large shipping center?

A. Fresno proper is not a large shipping center. The business that comes out of Fresno originates principally in the Porterville district, served by the Southern Pacific rails.

Q. Is Madera a large shipping center?

A. No. All the traffic which comes from Madera originates in the Swiss-Italian colony on Southern Pacific rails.

Q. Is Merced a large shipping center?

A. I would not call it a large shipping center; no.

Q. Is Stockton?

A. Not of transcontinental traffic.

Q. Is Sacramento?

2452 A. No.

Q. Is Marysville?

A. No.

Q. Is San Jose?

A. San Jose ships more, I should say, than any of the other points you have enumerated.

Q. Is Oakland?

A. No.

Q. Is Red Bluff?

A. No.

Q. Is Dunsmuir?

A. Lumber comes from up in that country. I do not know as to the station, whether Dunsmuir ships much or not.

Q. Is San Francisco?

A. No.

Q. Are any of these points on the line beginning with Fresno and ending with San Francisco that I have just been over large receiving centers?

A. Yes; some of them.

Q. Which?

A. I speak of large receiving centers as receiving transcontinental traffic.

2453 Q. That is what I mean.

A. Stockton, Sacramento, San Jose, Oakland, and San Francisco.

Q. The competition between the Sunset Route and the Ogden route, in the sense that you have used the term in, remained just as strong all through the Union Pacific merger period as it was before?

A. I said yesterday, in response to your question, that so far as any instructions which I had received as the eastern representative of the Southern Pacific were concerned, the competition had remained as strong for the Atlantic seaboard traffic; but that I did not know what instructions the joint traffic director of the Union Pacific had given the Southern Pacific officers in California.

Q. Then you meant by that that you do not know whether it had remained as strong through that period?

A. No; I could only speak for part of it.

Q. And from your general knowledge of the traffic situation during that period, that is as extensively as you could state it?

A. Yes.

2454 Q. If the Central Pacific Railroad were operated separately the policy which you say has always been pursued by the Southern Pacific Company with reference to the Atchison would naturally give to the Central Pacific Company the same privileges and opportunities over the Southern Pacific rails that the Atchison has enjoyed?

A. I should say that the policy of the Southern Pacific Company in that respect would be as liberal as it has always been; but it takes two to make a bargain, and the policy would probably have to be reciprocal to make a bargain at all. I could not say what the other party to the bargain would do.

Q. In the natural course of events the Central Pacific, if it were separately owned and controlled—and I mean by that, not only separate from the Southern Pacific but from every other railroad—would naturally cooperate strongly with the Union Pacific and the Union Pacific with it?

A. Yes.

Q. And that cooperation would naturally bring a desire, at least on the part of both of those railroads, to avail themselves of the opportunities furnished by the terminal line of the Southern Pacific Company to California points not reached by the Central Pacific?

A. I think the desire would naturally be that.

2455 Q. The natural desire of the Southern Pacific Company would be towards moving through Ogden that freight which

it could not successfully obtain for the Sunset-Gulf route or through El Paso?

A. I should say that the Southern Pacific Company might be indifferent as to whether the traffic moved through Ogden or through Salt Lake City.

Q. Do you think that if the Southern Pacific Company remained ambitious to serve the interests of its patrons it would be at all likely to prefer the service furnished over the Missouri Pacific and allied lines to that furnished over the Ogden route?

A. I do not think that it would be likely to prefer either. I think that the routes would be open, the revenue of the Southern Pacific Company would be the same, and the shipper would be invited to pay his money and take his choice.

Q. Having the two routes—the Central Pacific and the Western Pacific—open to it, the Southern Pacific Company would be left in a good position to handle freight that could not be controlled through the El Paso gateway? I refer to transcontinental freight.

A. It would be left in a position to get a short haul.

2456 Q. The Central Pacific Railroad, if it were separated and cooperating with the Union Pacific Railroad would become an active competitor of the Southern Pacific Company on transcontinental business, as a practical matter, would it not?

A. With the through route of the Southern Pacific the Central Pacific is an active competitor to-day.

Q. You forget that we are not arguing just that point now, but I am asking——

A. That is what I understood your question to be.

Q. I will have the question read, so that you can see just what it was.

Mr. McENERNEY. Did not your question carry an implication, which he has replied to? Is not that the trouble?

Mr. McCLENNEN. No; the witness argued the other side and ignored the question asked.

Mr. McENERNEY. Does not your question presuppose the nonexistence of a thing which exists, and is not that why he answered it in that way?

Mr. McCLENNEN. I will ask to have the question read, and you can see if it is not a perfectly fair question and susceptible of a perfectly definite, direct answer.

2457 Mr. McENERNEY. I thought that it was a question like "Have you quit beating your wife?" It may be that I am wrong.

Mr. McCLENNEN. It may be that your impression to that effect may have been caused by your not hearing it in full. Now, I will

ask to have the question read, so that its character may be observ
by my opponents, and its contents by the witness, and then answer
directly, if possible.

(The reporter read the pending question, as follows:)

"Q. The Central Pacific Railroad, if it were separated and coo
erating with the Union Pacific Railroad, would become an acti
competitor of the Southern Pacific Company on transcontinent
business, as a practical matter, would it not?"

The WITNESS. I could not answer that it would become becau
it is.

By Mr. MCCLENNEN:

Q. It would be, would it not?

A. It would be as it is.

Q. Will you describe just what you mean as the competition whi
now exists by the Central Pacific Railroad against the South
Pacific Railroad?

2458 A. All of the connections of the Central Pacific Railro
with an army of forces, use the facilities of the Central Pac
to-day to actively compete for all of the traffic.

Q. Perhaps I did not make my question clear enough. I did
ask you whether the connections of the Central Pacific Railr
were now competing with the Southern Pacific Railroad. I as
you if the Central Pacific Railroad itself was now competing w
the Southern Pacific Railroad—in and of itself.

A. I do not think that the Central Pacific could compete with
Southern Pacific, in and of itself.

Q. Understanding by your answer that it could not, that
mean incidentally, therefore, that it did not, I now ask you if
Central Pacific Railroad were separated and were cooperating w
the Union Pacific Railroad, it, the Central Pacific Railroad, wo
become an active competitor of the Southern Pacific Railroad
transcontinental business?

A. I must say that it would not become an active competitor.

Q. Why not?

A. Because it is an active competitor.

2459 Q. That is to say, you say it is now an active competi
although you also say that you do not say how it could com
with the Southern Pacific Railroad?

A. In and of itself, I said.

Q. If the Central Pacific Railroad were separately operated
natural effort and competition in that sense would be to pers
business to travel via Ogden? Now, I am not referring to what
other connections would do, but what that road itself would do.

A. That would be its natural effort.

Q. And consequently its effort would be to persuade traffic not to move via El Paso?

A. That would be the effect of an affirmative solicitation of the other kind.

Q. Yes. The efforts of the Central Pacific Railroad, and of the Southern Pacific Railroad on transcontinental business, would then be directed against each other, and competitive in that sense, would they not?

A. Unless the Southern Pacific joined with and delivered this business to the Central Pacific, versus the Western Pacific.

Q. The effort, so far as it exists, of the Southern Pacific to
2460 get traffic via El Paso would naturally not be diminished if it did not own the Central Pacific or the Western Pacific, would it?

A. No.

Q. The effort would be as great as it is to-day in favor of El Paso?

A. I think so.

Q. And probably greater?

A. I do not know that it would be greater for the same insuperable reasons that exist to-day.

Q. Competition as a practical matter does furnish an inducement for the maintenance of good service and the improvement of service on the part of the competitors?

A. Yes.

Q. And competition has played a great part in the development and improvement of the service furnished by the railroads to the shippers?

A. Everywhere.

Q. And will in all probability continue to do so?

A. I expect so.

(Whereupon a recess was taken until two o'clock p. m.)

2461 AFTER RECESS.

LEWIS J. SPENCE, the witness under examination at the taking of recess, resumed the stand and testified further as follows:

Redirect examination by Mr. BLAIR:

Q. In mentioning the names of towns on and off the Central Pacific lines I notice you did not mention among the names on the Southern Pacific line and not on the Central Pacific, Monterey, Richmond, Bay Point, Benicia, and Petaluma. Those are all places on the Southern Pacific line?

A. Yes.

Q. And not on the Central Pacific?

A. No.

Q. And the originators of traffic in some amount?

A. Some traffic.

Q. They are as important places as many of the other places you named?

A. Yes; some of them.

Q. I notice also, in stating the names of places on the Central
2462 Pacific which were also reached by the Southern Pacific lines, you included Madera and Merced and Stockton. In what way are those three places reached by Southern Pacific lines?

A. By disconnected branches.

Q. By branches which have no connection with the other lines of the Southern Pacific system; not standing in the name of the Central Pacific?

A. Yes.

Q. In the cross-examination you were questioned in regard to the citrus fruit movement from southern California via the Ogden route, which you described as a seasonal movement, occurring regularly about two months of the year. I understood you to say that was due to climatic and commercial conditions.

A. Yes.

Q. Which overcame for the time being the natural disadvantages of the Central Pacific line?

A. Yes.

Q. When that movement occurred was it accompanied by a proportionate cessation of the movement via El Paso?

A. Yes; the movement via both routes is seasonal.

2463 Q. Was that movement due to any conditions which the rail carriers created or could create?

A. No.

Q. As far as it was influenced by any persons, by what persons was it controlled or influenced?

A. The shippers.

Q. Did any of that traffic have origin or destination on any line of the Central Pacific?

A. No.

Q. I understood you also to say that the Panama Canal was opened for business about what time?

A. August 15, 1914.

Q. And what effect did the opening of that canal and the inauguration of the steamship lines which you have referred to have upon the movement of transcontinental traffic, especially traffic between California and Atlantic seaboard territory?

A. I should say that it revolutionized the movement by a radical reduction of rates.

Q. It revolutionized the tonnage movement as it existed prior to that time?

A. Prior to that time; yes.

2464 Q. Is that effect likely to be temporary or is it likely to increase or decrease in the future?

A. It will be permanent, and is likely to increase.

Q. In regard to Nevada traffic via the El Paso route, westbound, there appears to have been a movement of some 539 tons. What is the explanation of that movement?

A. It consisted almost entirely of grinding pebbles which are used in the crushing of ore in the Tonopah district, and moved via the Sunset Route upon a rate which was created by a combination of a rate of fifty cents from New York to San Francisco originally made against sea competition and a rate from San Francisco to Tonopah.

Q. It consisted entirely, then, or almost entirely, of one commodity?

A. Yes.

Q. It appears, I believe, from the statement prepared by you, that there was no eastbound movement to Nevada?

A. No.

Q. Via the El Paso route?

A. None whatever.

Q. What kind of a route, Mr. Spence, is the all-rail route from northern and central California via New Orleans to and from Middle West territory?

2465 A. It may be regarded, under the existing conditions, as an impracticable route.

Q. Is it your recollection and understanding that the Santa Fe was ahead of the through route via Ogden formed by the Southern Pacific, the Union Pacific, and its eastern connections in getting into a position to offer as good service as the Sunset-Gulf route?

A. I have no such recollection. My understanding of the matter is that through billing and coordination of lines came about very much about the same time.

Q. Between all of the all-rail lines?

A. Yes.

Q. It is true, is it not, that the opening of this Sunset-Gulf route created, as it were, a great deal of transcontinental traffic which had not before that time been in existence?

A. It created it in the sense that it drew traffic from the schooner lines—sailing vessels.

Q. Did it not afford facilities for marketing traffic which did not before exist, so as to create a market which was not previously open to California products?

2466 A. It afforded better facilities than had ever before existed.

Q. Did not that have the effect of causing the movement of traffic which could not move under the existing conditions?

A. Under the conditions that previously existed?

Q. Yes.

A. I should think so.

Q. For fourteen years, from 1869 to 1883, the Southern Pacific had a 100 per cent interest in improving the transcontinental line through Ogden, did it not?

A. Yes.

Q. And naturally it must have made that effort?

A. I should think so.

Mr. McClennen. Petitioner objects to the question as excessively leading, as addressed to a witness who had nothing to do with the business prior to 1883.

By Mr. Blair:

Q. Now, Mr. Spence, if the difficulty as to coordinating the through all-rail lines was with the eastern carriers, at Omaha and farther east, which company would naturally be expected to assume the burden of arousing those connections and bringing about that coordination?

2467 Mr. McClennen. The petitioner objects to the question as calling for an opinion upon a question which is in part one of law as to the legal duty of the carriers, and as to a matter which is incompetent and immaterial, and as to which it does not appear that the witness is qualified to speak.

(By request, the reporter read the pending question as above recorded.)

The Witness. The immediate connection of those lines.

By Mr. Blair:

Q. Speaking of the Ogden route, would that mean the Union Pacific or the Southern Pacific?

A. The Union Pacific.

Q. That would be in accordance with the natural way in which railroads work under such circumstances?

A. Yes.

Q. The Union Pacific had a 100 per cent interest in securing such coordination, did it not?

A. Yes.

Q. Do you know of any hypnotic influence exerted by Mr. Stubbs during that period, or by any one connected with the Southern Pacific, over the officials of the Union Pacific to prevent that natural action on their part?

2468 Mr. McCLENNEN. The petitioner objects to the question as introducing an immaterial realm of speculation as to what the defendants mean to describe as "hypnotic."

By Mr. BLAIR:

Q. You may answer the question, and if you have any doubt as to what I mean I will explain it.

A. I do not know of any influence of any kind that was exercised, or could have been.

Q. Do you know Mr. Thomas Schumacher?

A. Yes.

Q. Was he connected with the Union Pacific during at least some considerable part of that period?

A. Yes.

Q. Do you know Mr. John A. Monroe?

A. Yes.

Q. Was he connected with the Union Pacific during that time?

A. Yes.

Q. Those are the two gentlemen who have been witnesses for the petitioner in this case?

A. Yes.

2469 Q. If the Southern Pacific or Mr. Stubbs had failed to cooperate with the Union Pacific in securing proper coordination, or in improving the service by the Ogden route, would not those two witnesses have been likely to know it?

Mr. McCLENNEN. The petitioner objects to the question as leading, calling for an opinion upon a question as to which the witness is in no better position than the court upon the evidence to express an opinion, and upon a matter which is not properly a subject of opinion evidence.

The WITNESS. Undoubtedly.

By Mr. BLAIR:

Q. During the period of the merger of the Union Pacific and the Southern Pacific was there any independent Southern Pacific Company?

Mr. McCLENNEN. The petitioner objects to the question as calling upon the witness to express an opinion upon a question of law, not upon a matter which is proper matter for opinion evidence, as to which it does not appear that the witness is qualified to express an opinion.

Mr. BLAIR. Counsel for defendants explains to the witness that he is asking the question as to the actual practical operation of the Southern Pacific Company and its lines, and as to the fact.

2470 Mr. McCLENNEN. The question is further objected to as too general in form, and so phrased that a responsive answer to it

will of necessity not indicate the facts as distinct from opinions of the witness based upon facts not stated.

By Mr. BLAIR:

Q. You may answer the question.

A. There was no independent Southern Pacific policy.

Q. What do you mean by that?

A. I mean that there was no policy that was not dominated by the interests in control of the Southern Pacific.

Q. What interest was in control of the Southern Pacific?

A. The Union Pacific interest.

Q. Leaving aside the Ogden route, in what competitive fields were the Southern Pacific system and the Union Pacific system engaged at the time of and before the merger in 1901 in the contest for traffic?

A. Traffic between Atlantic seaboard and Colorado, between Atlantic seaboard and Utah; traffic between San Francisco and Portland, the Union Pacific having operated a steamship line between those ports and the Southern Pacific a rail line; transcontinental Oregon traffic; traffic between California and points in Ore-

2471 gon and Montana, and Asiatic traffic.

Q. How about traffic in the Willamette Valley?

A. The Union Pacific operated a steamship line on the Willamette River in competition with the rail lines of the Southern Pacific.

Q. In each of those competitive fields, was there actual competition at the time I have mentioned?

A. Yes.

Q. In regard to traffic substantial in amount?

A. Yes.

Q. I do not mean substantial in comparison with the total traffic of the two systems, but considered by itself.

A. Substantial in volume.

Q. Referring to the alternative rail routes via the Southern Pacific Ogden gateway and the Southern Pacific El Paso gateway, between California on the one hand and Middle West territory and Atlantic seaboard territory on the other, through what connections is the El Paso gateway made a practicable alternate route?

A. The El Paso & Southwestern and the Rock Island and eastern connections thereof; the Kansas City, Mexico & Orient, connecting at Alpine, and eastern connections thereof.

2472 Q. Are those the principal connections through which the El Paso gateway is for practical purposes an alternative route with the Ogden gateway?

A. Yes.

Q. When was the Rock Island connection made?

A. In 1902.

Q. Due to the construction of the Rock Island lines?

A. Due to the completion of the Rock Island lines to Santa Rosa.

Q. When were the Kansas City, Mexico & Orient connections made?

A. It connected with the Texas & Pacific in 1908 and with the Galveston, Harrisburg & San Antonio in 1913.

Q. At what points?

A. With the Texas & Pacific at Sweet Water and the Galveston, Harrisburg & San Antonio at Alpine.

Q. That was due to the construction of the Kansas City, Mexico & Orient?

A. Yes; it constructed first to Sweet Water and subsequently constructed beyond, to Alpine.

Q. In other words, those two lines tied on to you after your line had been constructed?

2473 A. Yes.

Mr. BLAIR. The witness is yours, if you have any recross.

Recross-examination by Mr. MCCLENNEN:

Q. The completion of the Rock Island connection was one of the things that rendered impracticable the getting of the movement of Middle West freight through New Orleans as a gateway, was it not?

A. I do not think so. It may have had some influence, but I think that the route through the New Orleans gateway had become impracticable as a competitor before the Rock Island was completed; that is, it could not meet the competition of the Santa Fe and the route through Ogden.

Q. The effort and substantial effect favorable to the New Orleans gateway continued up to the Union Pacific merger in 1901?

A. Yes; in 1901.

Q. The competition between the Southern Pacific and Union Pacific, between the Atlantic seaboard and Colorado and the Atlantic seaboard and Utah, and for transcontinental Oregon traffic

2474 and for California and Montana traffic, for the Asiatic traffic, and for the San Francisco and Portland traffic was very unsubstantial, comparatively, with the traffic through Ogden and El Paso; between the competitive western territory and the competitive eastern territory as to which we have heretofore been speaking in this case?

A. It represented a comparatively small percentage of the whole traffic, but was substantial in volume.

Q. Mr. Blair has just asked you, on redirect examination, substantially, whether the opening of the Sunset-Gulf route did not

develop the movement of traffic from California to Atlantic seaboard territory which under previously existing conditions could not move; in other words, whether the creation of that sort of a line did not create traffic itself that did not before exist.

A. Yes.

Q. What was developed that could not be handled through Ogden?

A. I said that I thought it had the effect implied by the question, because the bringing closer together of producing and consuming markets almost invariably has that effect. By "bringing closer together" I mean it brought the producer and consumer within

2475 a little over two weeks apart instead of nearly a month apart.

Q. The through lines created by the Atchison junction with the Southern Pacific and by the Texas & Pacific junction with the Southern Pacific both preceded the completion of the through line of the Southern Pacific to New Orleans, did they not?

A. Yes.

Mr. McCLENNEN. I think that is all.

(Witness excused.)

(The following testimony of James Speyer, taken at the beginning of the afternoon session on Thursday, April 22, 1915, is inserted at this point to avoid interrupting the testimony of Lewis J. Spence.)

2476 JAMES SPEYER was called as a witness on behalf of the defendants, and, having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. Are you a member of the firm of Speyer & Company, bankers?

A. I am.

Q. Were you a member of the firm in 1898 and 1899?

A. I was.

Q. How long have you been a resident of New York?

A. I was born in New York and have lived here about thirty years.

Q. Did your firm, Speyer & Company, participate in the settlement of the indebtedness of the Central Pacific Company to the United States?

A. Yes; they did.

Q. Did your firm participate in the readjustment of the affairs of the Central Pacific Company about the same time?

A. Yes; it did.

Q. With what parties or interests did you have negotia-

2477 tions and conferences in the course of the readjustment of the affairs of the Central Pacific Company?

A. Well, we had conferences with representatives of the bondholders, our own representatives, with the representatives of the

shareholders, both here and in Europe, and with the representatives of the United States Government.

Q. And with representatives of the Southern Pacific Company?

A. And with representatives of the Southern Pacific Company.

Q. Did those negotiations and conferences extend over some time?

A. Yes; they did.

Q. Did you have negotiations and conferences with representatives of the United States Government and others in connection with the settlement of the indebtedness to the United States?

A. Yes, sir; we did.

Q. Were those two sets of negotiations and conferences being carried on concurrently?

A. Yes; more or less.

Q. And with reference to each other?

2478 A. Yes; they were.

Q. What was the occasion or purpose of the readjustment of the affairs of the Central Pacific Company?

A. The debt of the Central Pacific to the United States Government of about fifty-eight million dollars was due and payable, and this required a readjustment of the affairs of the company in order to satisfy the United States Government as to the payment of that debt within the limits of the law that had been passed for that purpose.

Q. Do you recall the act of Congress, passed in 1898, which referred the matter of the settlement of this Central Pacific indebtedness to a commission composed of the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, who were authorized to make the settlement with the approval of the President?

A. In a general way I do.

Q. Do you remember the conditions imposed by the act of Congress itself, among other conditions, that the commission should not accept less than the full principal of the debt and interest?

A. I do.

2479 Q. And that there should be no extension granted for any longer period than ten years?

A. I do.

Q. And that the whole amount should be paid in equal semiannual payments within the period so limited?

A. Yes.

Q. Please state whether the Central Pacific could have complied with the conditions imposed by that act of Congress without a financial readjustment of their affairs of the kind contained in the readjustment which you arranged for?

Mr. McCLENNEN. Petitioner objects to the question as calling for an opinion upon a matter not the subject for opinion evidence, and which the witness does not appear to be qualified to express.

(By request, the reporter repeated the pending question as above recorded.)

The WITNESS. Without some kind of readjustment they could not have complied. I am not prepared to say that the adjustment we made was the only kind; but some kind of readjustment seemed absolutely necessary.

By Mr. BLAIR:

Q. And you made a plan of readjustment?

A. We did.

2480 Q. I put before you, for convenience of reference, the plan of readjustment which was used when Mr. Ruhlender was testifying. You recognize that as the plan of readjustment which was arranged for?

A. I do.

Q. Mr. Speyer, when you started to work upon that plan of readjustment did you expect and count upon the intervention and aid of the Southern Pacific Company?

A. I knew I could not carry it through without the help of the Southern Pacific; or some other railroad company, in case the Southern Pacific had not come to assist.

Q. Did you ever contemplate or work upon any plan which did not involve the intervention and aid of the Southern Pacific Company!

A. I did not.

Q. And that plan could not have been carried through without the intervention and aid of the Southern Pacific Company?

Mr. McCLENNEN. Petitioner objects to the question as already covered by the answer of the witness, and as leading.

By Mr. BLAIR:

2481 Q. Mr. Speyer, considering the terms required by the act of Congress, namely, the requirement that the entire debt of fifty-eight million eight hundred thousand dollars, in round numbers, would have to be paid in ten years, in twenty semiannual installments, would any one at all familiar with the Central Pacific affairs know that the Central Pacific, with its own resources and credit, could not comply with those conditions?

A. He would.

Q. It would be obvious to anyone at all familiar with the affairs of the Central Pacific that it could not with its own resources and credit comply with the terms of that act?

A. Yes, sir.

Q. In making the agreement which you participated in with the United States, what did you count upon to enable you to carry out the agreement with the United States?

A. The cooperation of the security holders of the Central Pacific and of the Southern Pacific Company.

Q. As outlined in your plan of readjustment?

A. Yes.

Q. Had you formulated your plan of readjustment before you executed the agreement with the United States?

2482 A. Yes, sir.

Q. Would you have signed that agreement if you had not had your plan of readjustment formulated?

A. No, sir.

Q. Would you have signed the agreement if you had not been reasonably assured of the operation of the plan?

A. No; I would not.

Q. With whom did you negotiate or confer as representing the United States Government in connection with the settlement agreement with the United States Government, which bears date February 1, 1899?

A. It is sixteen years ago, and I could not recall everybody with whom I conferred. I remember, however, that I principally conferred with the late President McKinley personally.

Q. Did you have any conference or communications with Attorney General Griggs?

A. I think I saw him, too; but the principal negotiations were with President McKinley personally.

Q. In your negotiations or conferences with the representatives of the Government, did you inform them of your plan of reorganization?

2483 A. I think I did. I could not recall the details of our conversations, but I do not see how I could have talked with them about anything else.

Q. Did they know the main features of the plan?

A. I should think so.

Q. Is that the best of your recollection, that they did?

A. It is.

Q. When it was formulated, do you remember furnishing them with a copy?

A. That is a detail I do not remember; but to the best of my knowledge and belief, I must have.

Mr. McCLENNEN. The part of the answer beginning "but to the best of my knowledge and belief" and thereafter, the petitioner moves to strike out as not responsive.

By Mr. BLAIR:

Q. I will ask you: To the best of your knowledge and belief, you did furnish them with a copy of the plan?

Mr. MCCLENNEN. The petitioner objects to the question as incompetent, immaterial, and irrelevant.

The WITNESS. I did. Do you mean the President of the United States?

By Mr. BLAIR:

Q. Or any representative of the United States.

2484 A. Well, we surely furnished a copy to the counsel that represented the United States commission; that is, Mr. Root.

Q. Mr. Root represented the commission in some of these transactions?

A. If I remember right, the mortgage securing the bonds which the United States Government got—I know that was done with his assent, and corrected by him, I think.

Q. Did the representatives of the Government know that the Southern Pacific was to guarantee the Central Pacific four per cent bonds which were to be pledged to secure the notes given to the Government, to the best of your recollection?

A. They did.

Q. I think you have answered this; but can you remember the details of your conversation with the representatives of the Government at this time?

A. In what particular? It is rather hard for me to remember. It is sixteen years ago. In what particular do you mean?

Q. I was just asking you whether they are fresh in your mind or whether you can remember them.

A. I can not remember the details.

2485 Q. You can not remember the language you used in your conversations with the representatives of the Government?

A. I remember certain parts of the first interview I had with the late President McKinley.

Q. It will come out in my series of questions, and whenever you can remember the language you can give it; otherwise you will have to do the best you can and answer to the best of your recollection.

A. Yes.

Q. What effect upon the value of the bonds as security did the Southern Pacific guaranty have?

A. It increased their value.

Q. Greatly?

A. I should say so.

Q. How did the resources and credit of the Southern Pacific Company compare with those of the Central Pacific?

A. They were superior to those of the Central Pacific.

Q. Was the superiority very great?

A. I suppose the quotations of those days, which I have not before me—the quotations of the bonds and stocks, which I do not remember—would show how great the difference was in public opinion.

486 Q. What is your recollection about it?

A. That it was very considerable.

Q. State what was the understanding as the result of your negotiations and conferences with the representatives of the Government as to the bonds which were to secure the Central Pacific notes bearing the guaranty of the Southern Pacific Company, to the best of your recollection.

Mr. McCLENNEN. Petitioner objects to the question on the ground that the understanding, except so far as incorporated in the agreement, is immaterial; and so far as incorporated in the agreement the question calls for the contents of a written instrument.

(By request the reporter repeated the pending question as above recorded.)

The WITNESS. You mean whether the Government understood they were to be guaranteed?

By Mr. BLAIR:

Q. Yes.

A. Yes; they did.

Q. Would it have been in accordance with your understanding with the Government, as you recollect it, for you or the Central Pacific to have deposited as security bonds which

487 did not have the guaranty of the Southern Pacific Company?

Mr. McCLENNEN. The petitioner objects to the question on the ground that it calls upon the witness to determine a question of law, and so far as it relates to his understanding of his contract, if it varied from the written instrument, as a matter which is immaterial.

The WITNESS. No; it would not.

By Mr. BLAIR:

Q. Mr. Speyer, I call your attention to a paragraph in the agreement with the Government of February 1, 1899, as follows:

"The mortgage securing such refunding bonds shall be prior in lien to any lease of the railroads of said Central Pacific Railroad Company or their appurtenances or any portion thereof."

What lease was there at that time of the Central Pacific properties?

A. The lease to the Southern Pacific.

Q. Was there any other lease?

A. Not that I remember.

Q. Did the Government know of that lease to the Southern Pacific Company?

2488 A. I should say so.

Q. Can you tell us any of the circumstances connected with the signing of this agreement which bears date February 1, 189 by the President and the members of the commission?

A. In what way?

Q. That will enable us to approximate the date. Or perhaps may ask it in this way: Were you present when President McKinl signed the agreement?

A. Yes; I was.

Q. How did you happen to be present?

A. As far as I remember it, I took the agreement there myse from New York shortly before the 20th of February. It was a w few days before the 20th of February.

Q. Yes.

A. We had intended to put the plan in effect before the 20th February; everything was ready, the circular and all, and the fi sentence in the circular said that the agreement had been executa It was not actually executed. So I took it there myself. I went fro New York to Washington with this agreement.

Q. You had begun to get nervous as to whether the agreeme would be signed by February 20th?

2489 A. Yes.

Q. And you took it to Washington?

A. Yes.

Q. And what occurred there?

A. I remember some of the circumstances, because it was almo a blizzard and traffic had stopped, and I got stalled in Elizabeth a spent a miserable night there, and then I got as far as Philadelphi and if I remember correctly Mr. Roberts, who was then president the Pennsylvania, gave me a special train to get to Washington. got there late in the afternoon and Mr. McKinley expected me. H signed it at once, and I went over to the office of Mr. Bliss and t office of Mr. Griggs. I think I went there, or Mr. McKinley se for them and they signed it; but Mr. Gage had left Washington a could not be reached. There was great excitement about that, b cause we had to have his signature. President McKinley was leavi that same night to make a speech somewhere, where Mr. Gage w going to speak, too, and I do not remember whether it was in Bost or Albany, but he was going to speak there the same night M McKinley spoke, and Mr. McKinley promised me that he would g it signed, and he called his private secretary and gave it t

2490 him to put in his bag, and the first thing when he got to h

room, to the hotel, he was to go to Mr. Gage at once and have it it signed and then telegraph me to New York; and then he told me I could go back to New York and it would be all right. It was all done in a great hurry, and it must have been very shortly before the 20th, because this circular of the 20th said that the agreement had been executed, and it had not been then.

Q. You spoke of the intended publication of the plan of readjustment. Was that published?

A. Yes; it was published as it is dated here.

Q. Published in its present form?

A. Yes, sir.

Q. Was wide publicity given to it through the country?

A. It was widely advertised in Europe and in New York, and I suppose at other points. I can not remember; the record will show that.

Q. Were many copies mailed, and was it generally circulated?

A. Yes; it was a public document. It was published as a public document.

Mr. BLAIR. The witness is yours.

2491 Cross-examination by Mr. MCCLENNEN:

Q. Mr. Speyer, was this print that you have before you, which is the one that has been put in evidence in this case and is dated February 20, 1899, on the circular of promulgation, which perhaps you know as the plan of readjustment dated February 8, 1899, the first print of the plan of readjustment?

A. There were, no doubt, numerous proofs before that, but this was the first complete, final print.

Q. When was this put in print?

A. When?

Q. Yes.

A. In February, I should say.

Q. Can you tell me when in February?

A. No; I could not tell you any more than that. I should say that the original—these things are worked over, you know, and there were probably twenty or thirty proofs or revises, and I suppose that it was put in type before that time; but the final proof probably was made in February.

Q. When did you first take up with any member of the com-
2492 mission, or with President McKinley, the matter of the readjustment?

A. I could not tell, off-hand, when I first began. I should say that I saw President McKinley probably half a dozen times. I could not recall now when I first saw him about it.

Q. Perhaps I should have asked you before this. When, after 1899, have you had occasion to consider the details of this matter that you are testifying to?

A. When after 1899?

Q. Yes. I mean what, if anything, has there been to call the matter to your attention since 1899 up to to-day?

A. Well, quite a number of things.

Q. When, first, within the last couple of years, did you have occasion to put your mind upon the question of the details of this readjustment?

A. I saw in the papers, I suppose some three years ago—I do not know how long ago—that the Government was contesting the ownership of the thing, and I saw that, and it came back to my mind about the acquisition of the company by the Southern Pacific.

Q. Did you, on observing that a suit was brought or was in contemplation, review the papers?

2493 A. No.

Q. Or go into the matter so that your mind would be particularly refreshed about it?

A. No. I looked through that day before yesterday.

Q. That is coming down to what I wanted to call your attention to. Up to a couple of days ago, had there been in the last sixteen years any occasion for you to review the matter of these dates, or the sequence of your negotiations, or any of the other matters you have testified to?

A. I have been thinking about it, but I have not reviewed it.

Q. What have you looked at, if anything, to enable you to fix the dates?

A. Nothing, except that I have a bound copy of these papers in my desk now, which contains the Government contract and all the papers. I looked that through. My partner was here as a witness three or four days ago, and he talked to me about it before he went. Otherwise I have not looked it up.

Q. What else have you done with a view of refreshing yourself on the subject?

A. We talked together, my partner and I, about it. He remembered some things that I did not.

2494 Q. Calling your attention to the fact that the act creating the commission for the settlement of the Central Pacific claims was approved July 7, 1898, will that enable you to fix at all, approximately, the time when you took up, either with the Attorney General or any other member of the commission or with the President, Mr. McKinley, the matter of readjustment?

A. I am sorry to say that I can not remember when I first saw

Q. Had you done anything with any of these gentlemen prior to the passage of the act creating the commission?

A. I do not think so.

Q. Should you say that you began your negotiations soon thereafter?

A. I think so, but I could not tell. I have not any recollection.

Q. You had been familiar with Central Pacific Railroad matters and Southern Pacific matters to some extent for a good many years at that time?

A. Yes; I was.

Q. When did you first have to do with any of the stock, bonds, or securities of either of these companies?

2495 A. I, personally?

Q. You, personally, or the office of Speyer & Company, in any way that would come to your attention.

A. Our firm took the first Central Pacific bonds long before I was in business, and that was, I think, in 1868 or 1867; but I have had to do with Central Pacific and Southern Pacific affairs ever since I have been active in our firm.

Q. When did you first enter the office of Speyer & Company?

A. I think it was in 1884. It may have been 1885 or it may have been 1883, but it was 1884, I think. I entered the office here in 1884, but before then I was in Frankfort, and I knew then, even, about it.

Q. That is, in Germany?

A. Yes; I knew even then about Central Pacific matters.

Q. What firm were you connected with in Frankfort?

A. My father's firm. The name of that was Teixeira de Mattos Brothers.

Q. That is one of the other names appearing on this agreement here?

A. Yes.

Q. When did you enter that office?

2496 A. In 1882; in 1881 or 1882.

Q. When you took up the matter of this readjustment in 1899, the securities of the Central Pacific Railroad Company were held very largely abroad, were they not?

A. They were.

Q. The bonds were scattered through Europe and England?

A. Well, through the Continent and England.

Q. The Continent and England?

A. Yes.

Q. And the stock was, also?

A. The stock was in England and Holland. I do not think there was any stock in Germany.

Q. The majority of the outstanding stock was held either in England or in Holland?

A. That I can not say, that it was the majority; I do not know about that.

Q. Do you bear in mind the details enough to know that there was either a majority or near to a majority?

A. I could not say that; I do not remember. A large amount had been held in Holland, but I could not say what proportion.

2497 Q. The greater part, or the balance of the stock, was more or less widely distributed in the United States?

A. I do not recall that. I do not remember how much was held by Mr. Huntington, or whether he had any or not. I do not remember the amount.

Q. You do remember that there was a very large outstanding holding in the hands of comparatively small holders throughout the United States, do you not, at the time of the reorganization plan?

A. I do not know what you call a comparatively large holding. I could not tell, now, whether there was more in Europe or here, and how much there was altogether I could not tell you. The records will show that, though. You can get that. The stock was deposited under this plan partly in Europe and partly here, and you could easily in that way get at the facts.

Q. Yes. You recall that at that time, in 1899, the Southern Pacific Company did not itself own any stock in the Central Pacific Railroad Company?

A. I do not remember. I could not tell.

Q. Do you not remember about that?

A. No; I could not tell. I should think that Mr. Huntington had some of the stock, but I could not tell.

2498 Q. I meant the company itself—the Southern Pacific Company.

A. Yes. I could not tell.

Q. Do you remember, in connection with carrying through the readjustment, that it became necessary to acquire a block of stock of the Stanford estate—some 32,000 shares?

A. Yes; from the estate of Leland Stanford. I remember distinctly about seeing Mrs. Stanford about it. She wanted to sell the stock, and at first when it was quite low. I think the stock was bought afterwards at a higher price. I can not remember whether it was bought by Mr. Huntington or by us. I can not remember that.

Q. Do you remember that there was an incident of that kind?

A. I know that Mrs. Stanford was very much worried about it, and she wanted to sell. This plan was just going forward then, and

was going out, and I remember telling her to keep it, which she did.

Q. Speyer & Company had been the brokers for Mr. Huntington for some time prior to the time when you came here in 1885, and were so continuously through to his death, were they?

2499 A. Well, I should say we were his bankers. Brokers sell on commission. Of course we bought securities and we sold them. There is a little difference, as a rule.

Q. You understand, of course, that I was not using the term "brokers" in any invidious sense.

A. Yes; but there is a distinction there, as to whether you sell on commission or are the principal.

Q. Then, adopting your amendment, Speyer & Company had been the bankers for Mr. Huntington?

A. Yes.

Q. In his stock transactions, away back of 1885, had they not?

A. Well, I could not say "stock transactions". I mean that we were his bankers in the contract business, and he had very little stock transactions, except that at one time he bought a block of Central Pacific shares, and we sold them in Europe.

Q. That was a large block?

A. I could not remember now. It was before I was a partner.

Q. That is, that was somewhere back of 1884?

A. Before 1884, I think.

2500 Q. When you came into the New York office of Speyer & Company in 1883, 1884, or 1885, the stock of the Central Pacific Company was then already largely held in England and Holland?

A. Yes.

Q. And also quite widely distributed among holders in the United States?

A. I do not remember the United States part as well. I remember about Europe distinctly, because I came from Europe over here, and I knew more about the European situation.

Q. That is, you knew of the shares being over there before you came here?

A. Yes.

Q. Do you remember whether, before you came to this country, up in the vicinity of a majority of the stock of the Central Pacific Railroad Company was already distributed in England and Holland?

A. As I told you before, I can not remember the percentage at all, but that is a question of fact which can be looked up. I can not remember whether it was a majority or not.

Q. Are there any records of Speyer & Company of those
2501 early days, in the early eighties, which would shed any light on that matter?

A. I do not think so. Of course, the stockholders deposited under this agreement with the Central Trust Company, I think it is—

Q. Yes.

A. And the records would show that.

Q. Do you know to what extent the stock which in 1899 was held in England and in Holland had already been obtained by English and Holland investors, before you came to this country, in 1883, 1884, or 1885?

A. I do not know what you mean.

Q. I mean this: It has appeared already in this case, from the records of the Central Trust Company, to some extent at least, the deposits which were made under the plan of readjustment in 1899, and which came from Speyer Brothers in London and from Teixeira de Mattos Brothers in Amsterdam. It has already appeared—the deposits that came from those sources. Now, what I am trying to get at is your knowledge of the extent to which the stock so deposited from England and Holland was stock that had already got into the hands of England and Holland investors prior to 1884 or 1885
2502 when you came here.

A. There is not any person on earth who can answer that question.

Q. Was there, as far as you had any knowledge of it, any substantial activity in the sale of Central Pacific Railroad Company stock after you came to this country or after 1884 and after 1899?

A. I could not tell you.

Q. Do you remember whether Speyer & Company ever bought or sold any substantial amount of the stock of the Central Pacific Railroad Company after you came to this country?

A. I do not remember.

Q. Have you any dim recollection, either one way or the other, either that you did or did not?

A. Well, you recalled to my mind that stock of Mrs. Stanford. I do not remember whether we bought that stock or whether we did not; whether we bought it or whether Mr. Huntington bought it; but that is one thing that comes back which you have recalled to me.

Q. You knew, did you not, that at the time of the sale of the stock of the Central Pacific Railroad Company, in the early eighties,
2503 the Stanford-Huntington-Hopkins-Crocker interests were practically operated as one; that is, that the sales of Central Pacific Railroad Company stock were made for the four practically on joint account?

A. I could not answer that question now, because I think the Crocker stock was afterwards sold alone, and I could not answer that.

Q. The Crocker stock that was sold alone was, was it not, the stock that remained in the Crocker estate at the death of Mr. Crocker?

A. Yes, sir; that is true.

Q. That appears from an inventory filed in the case as of 1899 as something like 34,000 shares. Was that stock bought or sold by Speyer & Company?

A. I am just trying to think. I could not answer the question offhand.

Q. Have you books that would show that still extant?

A. I could not say. I could look it up. You understand certain records are kept in a business like ours that we consider important; but not everything is kept. Now, as to buying shares and selling them, we may have it and we may not. I could not tell.

2504 Q. Do you recall acquiring or dealing in any substantial amount of the stock of the Central Pacific Railroad Company from or for Mr. Huntington after you came to this country?

A. I do not recall it, but we may have. I do not recall it.

Q. You do not recall it?

A. No.

Q. And the same would be true as to Mr. Stanford or Mr. Crocker or the Hopkins estate?

A. I remember this transaction of the Crocker estate, and something about Mrs. Stanford; but I do not remember anything else, and you reminded me of those two.

Q. Then, to sum that up, do I understand you that you do not at the present time recall having bought any stock of the Central Pacific Railroad Company from Mr. Huntington or Mr. Stanford, Mr. Crocker, or the Hopkins estate, after you came to this country, except the holding of the Crocker estate, possibly, and the holding of Mrs. Stanford, possibly?

A. I do not recall it. I might say, in that connection, that I do not recall any single transaction—any single bond transaction—at that time, although they amounted to a great many millions of

2505 dollars, and I could not, without refreshing my memory, tell you what bonds were bought and sold up to 1899 of the Central Pacific Railroad Company.

Q. Do you remember how early it was in your career in Frankfurt that the Central Pacific Railroad Company stock was sold abroad, either in England, Holland, or Germany?

A. There was no Central Pacific stock sold in Germany at all, so far as I remember. I do not remember. I do not think there ever

was any sold. I remember about the bonds of the Central Pacific Company when I was at Frankfurt.

Q. The stock sales, so far as they were in Europe, were, as far as you know, confined to England and Holland?

A. To England particularly.

Q. Then, to amend my question that much, can you shed any light on how early the sales were first made in England?

A. It was before 1884, I should think.

Q. But how much before you are unable to state?

A. I could not tell you. It was in 1881, possibly. I could not tell.

Q. In putting through this readjustment in 1899, with whom did you deal, representing the English and other European stockholders? Did they have a representative?

2506 A. There was a stockholders' committee, of which Mr. Banbury was the chairman.

Q. Do you remember whether Mr. Banbury's committee controlled a majority of the stock?

A. I do not remember.

Q. Do you remember anything about the amount of the holdings represented by the Banbury committee?

A. I can easily look that up, but I do not remember it.

Q. Did the outside stockholders in the United States—and by "outside" I mean those not directly connected with the Central Pacific Company's interests, or the Huntington interests, or the Stanford interests, or the Crocker interests, or the Hopkins estate interests—have a committee representing them?

A. As I remember, they had; and I think Mr. August Belmont was the chairman of it.

Q. And that stock which what we will call the Belmont committee represented was the outside stock, of persons not connected with the Southern Pacific Company or with these four large interests that we have spoken of?

A. I could not remember. I could not tell you how that was.

Q. Mr. Belmont's committee did not represent in any way

2507 the Huntington interests, did it?

A. I do not think so.

Q. Or the Stanford interests?

A. No; I do not think so.

Q. Or the Crocker interests or the Hopkins interests?

A. If I remember correctly—I have not looked it up, but it can easily looked up—the Belmont committee was the committee which represented shareholders in the United States, and they would represent any stock that should be deposited with them. Now, whether

any of the interests mentioned had that Central Pacific stock and deposited it with them, I do not know. My recollection is not quite clear on that situation, but I think the Belmont committee was a committee just like the London committee; they would represent any stock that was deposited with them.

Q. Was not Mr. Huntington himself representing directly such stock as he still held in the Central Pacific Railroad Company, without the intervention of any committee?

A. Representing where?

Q. In the negotiations. That is, Mr. Huntington, so far as he was a stockholder in the Central Pacific Railroad, did not deal
2508 with you through Mr. Belmont's committee in any way, did he?

A. I do not think he dealt with me at all as a stockholder in the Central Pacific. My dealings with Mr. Huntington were, as I say, as to the Southern Pacific Company. I do not remember dealing with him at all as a Central Pacific stockholder.

Q. Do you know whether Mr. Huntington continued to hold any stock of the Central Pacific Company at that time?

A. I do not recall it now.

Q. Do you recall that the stock represented by the Belmont committee and the stock represented by the Banbury committee, together, amounted to very much more than a majority of the stock of the Central Pacific Railroad Company?

A. I do not recall it; but it is no doubt true, if you have got it there. I would like to say, about this stock part, that, apart from my not remembering things generally so very well, that stock I did not have very much to do with. The stock was handled very largely in Europe, and the negotiations with the stock committee were carried on by the London house. I had very much more to do with the bonds and in connection with the Southern Pacific Company.

2509 Q. The Banbury committee you had known of as being in existence for some time before the reorganization, had you not, as a committee representing the interests of the Central Pacific Railroad stockholders in England?

A. I can not recall that. As I said just now, I did not have very much to do with the London end or with the stockholders' negotiations. They were conducted by my London partners, and I do not recall that.

Q. Do you remember that in the period of a number of years before 1899 there had been more or less mutterings from the English stockholders of the Central Pacific Railroad Company?

A. I do.

Q. And do you remember that Mr. Banbury's committee was a committee formed in the effort to focus the interests of the British stockholders?

A. I remember that the British stockholders were dissatisfied; the stock had declined very considerably, the Central Pacific stock, since it had been sold, and they were dissatisfied; and I suppose they formed this committee and relied on the guidance of the committee to see what could be done.

Q. Do you remember at one time that Mr. Banbury's com-
2510 mittee caused to be organized the Central Pacific Railroad Shareholding Company (Limited), a British corporation?

A. I do not remember it; but, of course, the fact that I do not remember it is not saying that it was not so.

Q. Do you remember anything about the prices at which the stock was sold in England and Holland originally?

A. It was before I was there; it was before I was a partner. I should think it was sold above fifty, but I could not tell. It was before I was there. I came to London, and there was a panic—one of the panics—I think it was the panic of 1883, and the stock had then declined to thirty-six, or something like that, and went down lower. It was selling considerably below the price at which it had been sold, and everything else was, too. It was not alone in that.

Q. Did it ever rise again, substantially?

A. Well, when the settlement with the Government was carried through and the debt paid, the Southern Pacific had given its shares and bonds for the Central Pacific, the stockholders came out all right.

Q. I was not referring to the profitableness of the transaction. Of course, after this reorganization went through, then there was
2511 no longer any Central Pacific Railroad stock on the market?

A. No.

Q. But I mean after this decline in the panic that you spoke of, 1883, so far as you recall, did the stock of the Central Pacific Railroad Company ever come up again?

A. I could not tell that. You mean from 1884 to 1899?

Q. Yes.

A. I could not tell that.

Q. Do you remember that at the time the stock was put out it was a dividend-paying stock, a substantial dividend-paying stock?

A. I do not remember it myself; but, as I say, it was before I was in business, and I do not remember. It used to pay six per cent, at one time, I think—six per cent dividends, and then it stopped.

Q. And it was during that six per cent dividend period that the great bulk of the stock was sold in England and Holland?

A. It was certainly during the period that it paid dividends; I do not know whether it paid six per cent dividends or not, at that time; but we would not have sold it unless it had paid dividends.

2512 Q. In this reorganization matter, when it came to 1898 or 1899, the problem that was presented to you as a banker to

deal with was that the Central Pacific Railroad was going to be sold under the Government foreclosure unless some means was found of paying the Government debt?

A. I do not remember the legal status, but I know that we feared a receivership or bankruptcy of the company unless the Government debt was settled.

Q. Do you remember that the very act which created the commission; that is, the act of July 7, 1898, directed that if the Government debt was not settled within the terms prescribed by the act, then action was to be taken to foreclose the lien of the Government on the bond-aided part of the railroad?

A. I do not remember it; but I think you are right.

Q. There is no question about the facts. I simply wanted to get at the extent of your recollection. You remember, do you, that there was a portion of the road that was subject to a lien for the Government debt, what was commonly called the bond-aided part of the road?

A. Yes; I remember that.

Q. Do you remember that that part of the road was also
2513 subject to a first mortgage equal to the amount of the principal of the Government debt?

A. I remember there was a first mortgage on it. I do not remember about the amounts.

Q. Then you remember that there were various other bonds of the Central Pacific Railroad Company outstanding?

A. Yes.

Q. The debts that you had to deal with, or had to take into consideration, were the bonds as set out under deposit securities in the plan, plus the Government debt of fifty-eight million odd dollars?

A. Yes.

Q. Which seems to make perhaps a little upward of one hundred and fifteen million dollars, dealing roughly?

A. Yes.

Q. Do you recall that the average annual net income of the Central Pacific Railroad itself for some years had been adequate to furnish a substantial return on one hundred and fifteen million dollars?

A. The company always paid all its fixed charges. I remember that.

Q. Perhaps that does not quite cover it, because, do
2514 you recall that the interest on the Government debt had not been treated as an annual fixed charge?

A. No. When I speak of fixed charges, I mean the bonds in the hands of the public.

Q. My question to you is: Do you recall that the net income of the Central Pacific Railroad Company had been, on the average, for, say, ten years, adequate to pay not only the fixed charges on the bonds outstanding, but also a substantial rate of interest on fifty-eight million dollars beside?

A. You mean ten years prior to 1899?

Q. On the average for ten years.

A. I could not remember.

Q. You had to do with the making up or approval of the financial statements in the reorganization prospectus, did you not?

A. Yes.

Q. And the average net income of the railroad——

A. You have it right there [indicating printed pamphlet]. There is the figure.

Q. And the average net income of the railroad before the payment of the fixed charges had been $4,893,259.17?

A. Yes.

2515 Q. That is to say, if you funded the Government debt at par, and funded the other outstanding bonds at par, the average return for the past ten years in net income would have shown approximately four per cent per annum for the entire refund?

A. I suppose that is so.

Q. The question answers itself, does it not—$4,893,000 plus is substantially four per cent on $115,000,000?

A. Yes.

Q. When you spoke of the possibility of refunding, you said, as I understood you, that it was obvious that the Central Pacific Railroad Company could not meet the terms of the act of July 7, 1898, from its own resources or without the assistance of the credit of the Southern Pacific Company or some other railroad. Is that a correct statement of your attitude?

A. Yes; that is correct.

Q. And as a banker, in 1899 you had necessarily, or in fact whether necessarily or not, become familiar with railroad securities to a great extent?

A. Yes.

2516 Q. And that necessitated your having some general knowledge of railroad situations, earnings, positions, prospects?

A. That is, very general knowledge. I do not claim any great knowledge of those things.

Q. Did you, in connection with the reorganization schemes, enter into any investigation to see whether there were any other railroads connections of the Central Pacific Railroad, or other competitors with the Southern Pacific Company, who could be interested in acquiring the Central Pacific Railroad or underwriting its bonds?

A. No; I did not enter into any investigation.

Q. Did you know anything about the desires of Mr. Harriman, or the companies with which he was affiliated, to acquire the Central Pacific Railroad in 1899?

A. I do not recall anything of that kind, because Mr. Harriman in those days was not the Mr. Harriman of later years. The Union Pacific had been unable—or had great trouble in paying its own debt in full to the Government, and was not the concern it is to-day; and it did not require any investigation on our part to show us there was not much help to be had from that quarter. The Union Pacific was being reorganized itself; the stock was being assessed
2517 heavily, and sold at six or seven cents on the dollar.

Q. You are not speaking of 1899, are you?

A. When was the date of the Union Pacific—I forget when that was due. It was due about the same time as the other.

Q. Do you not bear in mind, Mr. Speyer, from your recollection of the reorganization scheme, that the Union Pacific's debt to the Government had already been disposed of before you took up the matter of this reorganization of the Central Pacific?

A. I do not think it could have been finally disposed of, because I remember that one of my first interviews with President McKinley, the first time I saw him, he had an idea that the Central Pacific was not going to pay in full. It had not been forgotten that the Union Pacific had compromised itself by not paying in full; and the first interview I had with President McKinley he evidently thought we were trying to compromise—not to pay in full the debt of the Central Pacific. I remember that distinctly, and I remember distinctly my telling him that the Central Pacific was going to pay in full in some way. So the thing can not have been finally settled then.

2518 Q. Do you not remember, now that I call it to your attention, that the impression of President McKinley, which he indicated to you in his conversation, that you were seeking to compromise, was due to the efforts that had been made to have the Central Pacific debt compromised?

A. I do not think so, because I do not believe that was the case. The papers were full at the time of the Union Pacific trying not to pay in full, and the Government, through energetic action, having prevented this; and there was a great "hullabaloo" about it about that time. I do not remember the details, but I remember that I told the President that we were going to pay in full.

Q. Do you not remember that the reorganization of the Union Pacific—Mr. Harriman's connection with it—was completed in 1898?

A. Well, you see this was the end of 1898.

Q. This was the beginning of 1899. You are referring to a paper——

A. The first time I saw President McKinley was in 1898. I can not fix the exact date, but it must have been pretty near together.

Q. Do you not think, now, having these things called to
2519 your attention, that when you put through, or when you promulgated this plan of reorganization in February, 1899, that the Union Pacific debt had already been paid?

A. Yes. Then it had.

Q. And Mr. Harriman, in 1898, was recognized as a substantial, powerful factor in railroad financing here in New York at that time?

A. I think he was.

Q. Now, my question is not asking you specifically about the Union Pacific, but was any effort made to see whether any other railroad or any other financial interest than the Southern Pacific Company was ready to acquire the Central Pacific Railroad, or to underwrite the refunding obligations of the Central Pacific Railroad, as far as you know?

A. It is sixteen years ago, but as far as I can remember, we did not think there could be anybody, outside of the Southern Pacific, except the Union Pacific; and the Union Pacific was just emerging from reorganization itself. Nobody could tell how it was to work out, and it was our judgment that we could get more assistance from the Southern Pacific Company in settling that debt than from anybody else.

Q. You knew the railroad and geographical condition in
2520 California at that time enough to know the great value to the Southern Pacific Company of preventing the Central Pacific Railroad from going into any hands other than the Southern Pacific Company's, did you not?

A. Well, I was not thinking so much of that as I was thinking: Where could we get the best financial and the strongest financial backing, and the Southern Pacific backing at that time would be a great deal more valuable than that of the Union Pacific. I do not want to compare Mr. Huntington and Mr. Harriman at all, but the Union Pacific was just then emerging from the receivership.

Q. As a matter of fact, was the problem of putting through some kind of a reorganization first presented to you by the representatives of the Central Pacific Railroad or by the representatives of the Southern Pacific Company?

A. Well, I should say by neither. I think it naturally suggested itself to us as bankers, having sold such a large amount of securities and the company being threatened with bankruptcy, we naturally sat up nights thinking how we could save it, because these bonds

were all out, all over Europe, and stock too; and we tried to find some means to work it out so that these people would not lose
2521 their money. So that I think that originally when this debt came nearer and nearer, when it got so that it became a threatening thing to the Central Pacific security holders, we naturally began to look around to see how we could stave off receivership and bankruptcy. I think the initiative probably came just as much from us as from any of the railroad companies. I am sure it did.

Q. When you had determined upon the desirability of preventing a foreclosure or receivership or bankruptcy, as you put it, did you take it up with the Central Pacific Railroad Company or did you take it up with the Southern Pacific Company, in the first instance?

A. There was not any wide difference. Mr. Huntington——

Q. Whichever you took it up with, it meant that you went to see Mr. Huntington?

A. Yes; that is it.

Q. And you did not know, when you were talking with him, just whether you were talking with him as looking out for the Central Pacific Railroad or looking out for the Southern Pacific Company's interests primarily?

A. Well, in a way that is true. I would like to say here
2522 that I had absolute confidence in Mr. Huntington, whether he represented the Southern Pacific or the Central Pacific or whether he looked out for the bonds or for his shares, or anything. I had absolute faith in Mr. Huntington. It would not have made much difference to me whom he represented.

Q. Of course a reorganization plan of this kind was in this case, as it always is, a gradual growth—one thing after another being added?

A. Yes.

Q. The vital thing about it was to get some kind of a refunding security which either would be taken by the existing security holders, or else could be put upon the market to raise money for the existing security holders. That was it, was it not?

A. And satisfy the Government debt. That was fundamental. The existing security holders were perfectly safe. Their bonds were not due except a little later, so that the first reason for this plan was to satisfy the United States Government.

Q. If the United States Government had foreclosed its lien, the stockholders abroad who had got their stock through your con-
2523 cern originally would have been virtually entirely out?

A. Every stockholder, whether he got his stock through our concern or not, would be; it would make no difference where he got it.

Q. So that the importance of getting some way of satisfying the

Government debt was to save that stock or to save the interests represented by that stock?

A. If the Government had foreclosed its lien and there had been a receivership, you could not tell how far it would go. You never can tell how far it will go. While primarily the stock would have suffered, I am not prepared to say that the other bonds of the system would not have been in some difficulty. In the case of a receivership you can never tell where it will end when it once starts.

Q. Then, to preserve the market values, both of the stock and the bonds, it was necessary to find some way of getting rid of this Government debt?

A. That is right; that is it, yes.

Q. And in order to do that it seemed to you necessary to get some security which would be satisfactory to the security holders—and by "security holders" I include the Government, having its lien.

2524 A. Yes.

Q. Or would be so marketable that you could get money with which to satisfy it?

A. Yes.

Q. Who hit first upon the fundamentals of this reorganization plan? By "fundamentals" I mean a new issue which should be a first lien and take the place of all the old securities, including the Government lien.

A. Well, if it is not going to be used against me I am willing to confess that I did it. I think I probably talked it over with either one of my partners. I think we probably talked it over, but it was worked out in our office.

Q. It is seldom that any railroad is so good that the addition of a valid guaranty by another railroad will not increase, at least slightly, the value of its securities? That is true, is it not?

A. There would not be any reason for giving it unless it did increase it.

Q. It would have been evident to you in this case, whether the Government wanted the guaranty of the Southern Pacific Company or not, that it would benefit the sale of the refunding bonds if

2525 they were backed by the guaranty of the Southern Pacific Company?

A. Yes; very much so.

Q. Did you take the matter up with President McKinley first before dealing at all with any members of the commission?

A. My memory is that I saw President McKinley first. I may be wrong about that.

Q. And when you saw him first, did you lay before him this possibility of a refunding issue which should be a first lien?

A. No; at the first interview I did not go into that detail with him at all.

Q. In this fundamental respect that I speak of, was the plan of reorganization ever changed after the first time that you did present it to President McKinley?

A. You mean that the bonds should be guaranteed?

Q. No; that they should be a new issue of refunding bonds which should be a first lien.

A. I do not think the plan was ever changed in that respect after the idea was once formulated.

Q. So that the first time you came to state any proposed
2526 terms to the United States Government those terms included at least that the refunding securities should be a first lien on the existing properties of the Central Pacific Railroad Company?

A. I should think so.

Q. Who drafted the final agreement which was made with the commission; that is, the agreement of February 1, 1899?

A. You mean the language, the formal agreement?

Q. The formal agreement.

A. The lawyers did that.

Q. Whose lawyers, in the first instance?

A. I think Mr. Beaman; Charles C. Beaman represented us, and I think Mr. Charles Steele. Mr. Tweed represented Mr. Huntington, and Mr. Root, I think, represented the commission. I could not recall who took part in which part of the documents.

Q. Do you have any recollection whether Mr. Root took any part in passing upon this agreement of February 1, 1899, upon the phraseology, the draftsmanship of it?

A. I do not remember it; but my partner told me that he did, distinctly.

Q. By your partner you mean whom?

A. Mr. Ruhlender, who remembers Mr. Root being at our
2527 office, and so on.

Q. You, of course, read this agreement of February 1, 1899, with some care before you executed it?

A. I suppose I did.

Q. And do you remember whether it included all the terms that you understood that you had agreed upon with the United States Government?

A. I do not remember it; but I take it for granted that it did.

Q. You recall that a part of the arrangement with the United States Government was that you were yourselves going to take off the hands of the Government almost immediately one-fifth of the debt?

A. There were, I think, four installments of the notes we were going to take up right away. I think it was about ten million dollars that we were going to take up right away.

Q. That is, there were twenty notes of two million nine hundred and odd thousand dollars and you were going to take up four of them?

A. I think it was——

Mr. McENERNEY. It was $11,800,000.

The WITNESS. $11,800,000; that is right. That was part
2528 of the plan.

By Mr. McCLENNEN:

Q. And in that way the Government, on the execution of this agreement, acquired the personal responsibility of Speyer & Company to take care of that much of the debt?

A. Well, I do not know about that.

Q. I mean, the personal responsibility of Speyer & Company to take care of the debt, assuming that the conditions of the agreement were met.

Mr. BLAIR. Section 7 of the agreement speaks for itself.

Mr. McCLENNEN. I am asking for his memory of his situation.

Mr. McENERNEY. Show him the clause.

The WITNESS (after referring to pamphlet). That is all right. It says so, so it must be. I do not remember all these things.

By Mr. McCLENNEN:

Q. At that time, in 1899, the financial condition of Speyer & Company was such that its obligation was, in itself, a valuable thing for the Government to obtain, was it not?

A. I do not know. I suppose they would not have done it if they did not think it was all right.

2529 Q. I am not putting this by way of paying compliments at all; but I mean this: Assuming, for the time being, that the bonds of the Central Pacific Railroad Company, guaranteed by the Southern Pacific Company, were not worth the paper they were written on, still the obligation of Speyer & Company was a valuable obligation to the Government in itself?

A. Well, if the bonds had not been good, our obligation would not have been quite as good either.

Q. You understand, Mr. Speyer, we are making a record for a court that does not necessarily know Speyer & Company.

A. I was only trying to see what you were trying to get at.

Q. What I meant was that the obligation of Speyer & Company to pay eleven million dollars to the Government was a valuable thing in itself.

A. Yes; no doubt.

Q. Did either Mr. Griggs, Mr. Bliss, Mr. Gage, Mr. Root, or President McKinley receive a copy of this reorganization plan that was promulgated by your circular of February 20, 1899?

A. I have no doubt they did.

2530 Q. By that you mean that you reason that they must have, but that you have no recollection one way or the other? Is that it?

A. I have no positive recollection; but it would be illogical to suppose that they did not get it.

Q. Since you can not help us by recollection, can you by reasoning indicate about when any of the five men that I have just mentioned received this?

A. If you will allow me to answer this in my own way, I will tell you.

These whole negotiations were carried on absolutely on the table. Everything that was done was known to everybody interested, and I am perfectly satisfied that they had this plan and the provisos of it, and knew exactly what we were doing all the time. I am satisfied that they knew about the Southern Pacific guaranty, and thought it a valuable thing. I could not tell you when I gave them this plan, or how many copies they got, or who got it. I can not remember. I do remember, however, distinctly that everything we did and everything I did was done just in that way; that they got everything; they knew everything we were doing, because I remember that President McKinley particularly thanked me when it was all

2531 over—I do not want to repeat his words, but he was very flattering about the way I had conducted this negotiation. He knew everything I was doing, and he showed me the greatest confidence, and let me do it in my own way.

Q. Don't you see, Mr. Speyer, that my question is not——

A. I answer with no feeling at all. I can not remember details of things like that sixteen years ago, but I can remember the general course of events.

Q. What I have asked you, Mr. Speyer, is this: Using both your recollection and your reasoning, simply to give me the best you can as to the time—which you have not put into this answer you have just given at all—the time when that plan which you promulgated February 20, 1899, was delivered to any of those gentlemen.

A. My answer is that the plan was handed to them as soon as it was ready, and while it was being made they were being kept posted as to what was going to be in it. They got the copy as soon as it was ready, and while we were making it up they were being kept posted as to all essential features. I do not think we told them about an item of fifty dollars or all little details like that, but the essential features of the plan they knew and were kept informed of.

2532 Q. Do you mean by that that you would be positive that they received this plan first, I will say, at least by the first of March, 1899?

A. I would be positive.

Q. You would be positive of that?

A. Yes. When I speak of them I include Mr. Root, their counsel, who probably got it first.

Q. I meant to include in these questions Mr. Bliss, Mr. Gage, Mr. Griggs, President McKinley, and Mr. Root—any one of them.

A. Yes.

Q. Now, would you be positive that they received the plan at least as early as the first of January, 1899?

A. Well, it was not ready, was it?

Q. Would you be positive that they received the plan at least as early as the first of February, 1899?

A. I would be positive that they had the plan before they signed the agreement with us.

Q. When did they sign the agreement with you?

A. It must have been a few days before the 20th of February for the reason I stated before.

Q. Then you would be positive that they had the plan a few days at least before the 20th of February, 1899?

2533 A. I can not swear to it. I should think so. I do not remember; I can not remember.

Q. Now, can you be positive of any date earlier than a few days before the 20th of February, 1899?

A. I can not be positive; no.

Q. Did you ever suggest to any of these five gentlemen their taking these bonds, or any bonds, without a guaranty?

A. Never.

Q. Did they ever talk to you about the possibility of taking any of these bonds without a guaranty?

A. You mean when I offered them the guaranty that they said they did not want it?

Q. No; I mean exactly the question.

(By request the reporter repeated the question, as follows:)

"Q. Did they ever talk to you about the possibility of taking any of these bonds without a guaranty?"

The WITNESS. No; I do not remember.

By Mr. MCCLENNEN:

Q. The first time, as far as you recall it, that the guaranty was matter of conversation between you and any of these five gen-

2534 tlemen was when you informed them that the bonds were going to be guaranteed by the Southern Pacific Company; is that right?

A. I do not quite understand.

(By request the reporter repeated the question as above recorded.)

The WITNESS. If you mean to say that they had not asked for the guaranty or mentioned it to me first, I could not say.

By Mr. MCCLENNEN:

Q. You can not say, one way or the other?

A. I could not remember whether I spoke to them first about the guaranty or whether somebody mentioned it to me.

A. Are you entirely without recollection as to whether any of the five gentlemen suggested the guaranty, or whether the first time it was mentioned it was on your suggestion?

A. I always thought the guaranty was absolutely necessary to carry through this scheme. It never occurred to me to dispense with the guaranty; so I do not attach any importance to whether they mentioned it to me or not. I knew I had to have the guaranty in order to make these bonds go.

2535 Q. That is, you knew that in order to market the bonds it would be, in your judgment, necessary to have the guaranty; is that true?

A. Well, in order to carry through the plan.

Q. In order to carry through the plan?

A. Yes.

Q. The plan provided, as indicated in it, for certain exchanges of securities?

A. Yes.

Q. Do you remember at all to what extent the old security holders took the new securities?

A. They took them very largely; a very large percentage, I think.

Q. Was there any substantial amount of the refunding bonds sold at the time, in 1899?

A. By us?

Q. By you.

A. Those we took from the Government we had to sell.

Q. That is, those you took when you took up the first four notes?

A. The eleven million dollars; and there may be some others; but that much was sure.

2536 Q. Did you have anything to do with the sale of the remaining forty-seven million dollars of those bonds as they were received back by the company from the Government when the debts were paid?

A. Yes; some of them were sold.

Q. In addition to the bonds which had been deposited with the Government, and which amounted in the aggregate to about fifty-eight million dollars, were any substantial number of the refunding

bonds sold by you, or were they taken directly by the old security holders?

A. $1,690,000 we bought and resold. The security holders, I think mostly took the new securities. I could not tell that, but I think that is what it was.

Q. A good many of those security holders who took these new re funding bonds were holders of first mortgage bonds already?

A. Yes.

Q. Of issues which were considerably less than one hundred mil lion dollars in the aggregate?

A. Yes.

Q. In order to get the security holders who held some fifty-seve million dollars of bonds to take the new bonds it was necessary t have those new bonds abundantly secured?

A. Yes.

2537 Q. In your judgment, in order to get those fifty-seven mil lion dollars of bondholders to take these new refunding bond it was necessary to have the guaranty of the Southern Pacific Com pany, or some other adequate guaranty?

A. Yes, sir; the reason being that the mortgage which they had w very considerably increased in amount by the bonds that went to th Government. If it had just been the question of extending the lie which they had, that probably could have been done without a gua anty; but the fact that the existing lien was so much increased in th bonds given to the Government, necessitated the guaranty of th Southern Pacific in order to make them good.

Q. That is, one of the effects of this arrangement was—if it is not to flippant a use of language—to let the Government down from th second story on to the ground floor, so far as security was concerned

A. Yes.

Q. And that had the effect of greatly increasing the securities wi which the old security holders would have to pro rate in case deficient assets?

A. Well, if it was not the Government, people would call

2538 diluting them. I would say the security was diluted; but long as the Government gets it, I do not use that word.

Q. Do you recall, now, whether any of the three commissioner the President, or Mr. Root suggested or required any substanti change in the plan which you originally proposed?

A. I do not recall it.

Q. Would it meet your recollection, as best you can give it, th they did not, and that the plan, in its essential features, as you fir presented it was the one which went through?

A. I rather think so.

Mr. McCLENNEN. That is all.

Mr. BLAIR. No questions.
(Witness excused.)

2539 JAMES A. SIMPSON was called as a witness on behalf of the defendants and, having been duly sworn, testified as follows:

Direct examination by Mr. BLAIR:

Q. Mr. Simpson, what is your occupation?

A. Transfer agent for the Southern Pacific Company.

Q. Do you remember that after the unmerger the stock of the Southern Pacific Company which was owned by the Union Pacific——

A. The Oregon Short Line.

Q. Or rather, by the Oregon Short Line. That part of it which was not transferred to the Pennsylvania Railroad was transferred to the Central Trust Company of New York, as trustee, under the decree?

A. Yes.

Q. Are you able to state, or have you prepared a statement from your records, showing the exact amount of the stock which was so transferred to the Central Trust Company of New York, as trustee, and which was in its name in that way on July 17, 1913?

A. Yes; I have.

2540 Q. Please state the number of shares which were so in the name of the Central Trust Company as trustee on July 17, 1913.

A. 883,576 shares.

Q. How many shares were left in the name of the Central Trust Company as trustee on August 17, 1913?

A. There was no change; 883,576.

Q. Can you explain why there was no change in that period?

A. The date of subscription to those certificates of interest which were issued by the Central Trust Company against the deposit of that stock was fixed as September 2, 1913, and no subscriptions had been anticipated on that date.

Q. How many of the shares which we have been referring to remained in the name of the Central Trust Company on September 17, 1913?

A. 353,192 shares.

Q. And on October 17, 1913?

A. 215,837 shares.

Q. And on November 17, 1913?

A. 179,911 shares.

Q. And on February 11, 1914?

A. 103,114 shares.

2541 Q. And what is the difference between the last figures you have named and the first figures—the original deposit? Just subtract that.

A. I make it 780,462 shares.

Q. Is it true to say that the number of shares you have last named had, during the period which you have covered by your testimony, been sold into the hands of the public generally?

A. I should say so.

Q. What was the increase in the number of stockholders between July 17, 1913, and February 11, 1914?

Answer my question first, and then I will ask you to give it to me by months.

A. The difference between the number of stockholders on July 17, 1913, and February 11, 1914, was 8,650.

Q. Give the number of stockholders on July 17, 1913.

A. 17,088.

Q. And on August 17?

A. 17,731.

Q. And on September 17?

A. 19,747.

Q. And on October 17?

2542 A. 21,553.

Q. And on November 17?

A. 23,100.

Q. And on February 11, 1914?

A. 25,738.

Q. How many shares which stood in the name of the Union Pacific, which were by it under the terms of the decree transferred to the Central Trust Company of New York as trustee, now remain in the name of the Central Trust Company of New York as trustee?

A. On April 17, 1915, the number was 36,513 shares.

Mr. BLAIR. The witness is yours.

Cross-examination by Mr. MCCLENNEN:

Q. Do you remember how long a time elapsed after the Attorney General informed the Southern Pacific Company of his intention to file an unmerger suit as to the Central Pacific Railroad before the first sales were made to which you have testified here?

A. I can not tell the time. The time the first sales were made, I think, was of record about thirty days prior to the date of subscription. I am not certain of that.

2543 Q. And how many of these shares have been sold since the unmerger suit now on trial was actually begun, namely, since February 11, 1914?

A. 66,601 shares.

Mr. MCCLENNEN. That is all.

Mr. BLAIR. That is all.

(Witness excused.)

Mr. MCENERNEY. The Commercial and Financial Chronicle is a weekly newspaper devoted to commercial and financial affairs, published weekly on Saturday in the city of New York, and has been in existence for twenty-five years, the first issue of the year 1899 being volume 68 and No. 1750. This paper had throughout the year 1899, and had for many years before that time, a large circulation amongst commercial and financial people and bankers in the United States of America and was one of the leading commercial and financial papers of the country, and the volumes that I have here are volumes 68 and 69 of that newspaper, covering the year 1899.

Mr. MCCLENNEN. The petitioner objects to this statement as immaterial, incompetent, and irrelevant; but, subject to this ob-
2544 jection, concedes that the statement may be taken to be proof of the facts stated.

Mr. MCENERNEY. We desire to offer in evidence from the issue of February, 1899, the item appearing in volume 68, page 329, at the foot of the second column, commencing with the words "Central Pacific R. R.," and ending on the next page, 330, with "V. 67, p. 1157, 1163."

Mr. MCCLENNEN. The petitioner objects to the introduction in evidence of this article and the others about to be offered by the defendants from the "Chronicle," and on the ground that the publications are immaterial, incompetent, and irrelevant, and are hearsay as to the facts narrated in the articles, and do not appear to have reached the eyes of anyone whose reading of them would be of consequence in this case.

Mr. MCENERNEY. The next one is an article in volume 68 of the "Chronicle", page 352, under date of February 25, 1899, entitled "The Central Pacific reorganization plan," occupying practically all of page 352, all of page 353, and a little over half of the first column of page 354.

The next one is under date of February 25, 1899, volume 68 of the "Chronicle", page 378, headed "Central Pacific R. R.–Southern
2545 Pacific Company," and running down to the second line of page 379, first column.

Under date of March 4, 1899, the next one appears in volume 68 of the "Chronicle", page 397, commencing with the sixth line on page 397, column one: "As expected, the Central Pacific readjustment is proving an unqualified success," and ending on the tenth line of the second column of the same page with the words "could have been attained in any other way".

The next one is March 4, 1899, volume 68, page 427, commencing with "Central Pacific R. R.–Southern Pacific Co.," in the first col-

umn of page 427, and running to the third paragraph of that item, ending with the words "or at the offices of their agents in Europe," but not putting in the paragraph: "Extension to be completed."

The next one is under date of March 11, 1899, volume 68, page 472, a five-line item headed "Central Pacific R. R.—*Listed.*"

The next one is under date of March 18, 1899, volume 68, page 523, column two, an item of five lines headed "Central Pacific R. R.—*Four notes paid.*"

2546 The next one is under date of April 1, 1899, volume 68, page 617, second column, commencing with: "Central Pacific R. R.—Southern Pacific Co.," down to and including the small type in the paragraph ending with the words: "They have been issued in accordance with the plan", but excluding the paragraph headed "Large sale of stock."

The next one is under date of April 15, 1899, volume 68, of the "Chronicle", at the foot of page 721, column two, headed "Central Pacific R. R.," which extends over to the next page, column one, down to the seventh line, inclusive, ending "V. 68, p. 617."

Next, from the Investor's Supplement, issued by the "Chronicle" April 29, 1899, page 24, column one, all of the matter commencing with "Central Pacific R. R." and ending with a series of page numbers, the last one being "721"; that is, down to but not including "Central Ry. of New Brunswick".

The next one is from the Investor's Supplement for July, 1899, page 24, volume 69, commencing, in column one, with "Central Pacific R. R. Co.," down to a series of page numbers ending with "V. 69, p. 26"; that is, just before "Central Ry. of New Brunswick".

2547 The next one is under date of August 5, 1899, volume 69, of the "Chronicle", page 282, at the foot of the second column, headed "Central Pacific Railway", an item of five lines.

The next is under date of September 23, 1899, volume 69, of the "Chronicle", page 645, column one, an item headed "Central Pacific R. R.—reorganization notice", an item of seven lines.

Then, the Supplement for October, issued October 28, 1899, page 22, commencing in column one, down to the end of the subdivision in the second column, ending just before the heading "Central Ry. of New Brunswick."

(The foregoing extracts from the Commercial and Financial Chronicle and the Investor's Supplement were marked, collectively, "Defendants' Exhibit No. 95, April 24, 1915," and will be found in the volume of defendants' exhibits.)

Mr. McCLENNEN. It is stipulated that the following are extracts from the Congressional Record at the volume and page from which they purport to be taken, namely:

"Proceedings of the United States Senate, Monday, February 20, 1899.

"'Pacific railroads.

"'The Vice President laid before the Senate a communication
2548 from Hon. L. J. Gage, Secretary of the Treasury, Hon. Cornelius N. Bliss, Secretary of the Interior, and Hon. John W. Griggs, Attorney General, the commission appointed by the act of Congress of July 7, 1898, to settle the indebtedness of the Government growing out of the issue of bonds in aid of the construction of the Central Pacific and Western Pacific Railroads, which, with the accompanying paper, was referred to the Committee on Pacific Railroads and ordered to be printed.' (Congressional Record, 3rd session, 55th Congress, volume 32, p. 2082.)"

"Proceedings of the House of Representatives February 20, 1899.

"'Executive communications, etc.

"'Under clause 2 of Rule XXIV, the following executive and other communications were taken from the Speaker's table and referred as follows: * * *

"'Report of the commissioners appointed to settle the indebtedness to the Government growing out of the issue of the bonds in aid of the construction of the Central Pacific and Western Pacific Railroads—to the Committee on Pacific Railroads and ordered to be printed.' (Congressional Record, 3rd session, 55th Congress, volume 32, p. 2121.)"

2549 Mr. McCLENNEN. It is stipulated that there is a record in the United States Department of Agriculture Weather Bureau files in New York as follows, and that these statements concerning the conditions narrated in that report are correct:

U. S. Department of Agriculture. Weather Bureau. Forecast district and marine center.

NEW YORK, N. Y., *April 22, 1915.*

Mr. CHARLES FRANKLIN,
Attorney Southern Pacific Railway,
165 Broadway, New York, N. Y.

DEAR SIR: In reply to your letter of this date relative to weather conditions of February 11–19, 1899, as affecting travel by railroad, I have the honor to report as follows:

During the three days preceding the 11th there was an unusually severe cold wave, the temperature reaching its lowest point, six de-

grees below zero, at 7.30 a. m. of the 11th. This caused practically a blockade of all the traffic in the waters about New York be-
2550 cause of the heavy ice. At 8 p. m. of the 11th there remained on the ground from previous snowstorms 8.5 inches of snow where not removed or disturbed. Snow began falling at 9.10 p. m. of the 11th, continuing through the 12th, becoming heavier during the night of the 12th–13th, continuing through the 13th, and ending before daybreak of the 14th. The total fall of fresh snow in the storm was 15.5 inches, which, together with the old snow, made a total of 24.0 inches when measured at 8 p. m. of the 14th.

The following quotations from the Daily Journal of this station, under date of February 13, 1899, will show the severity of the storm:

"About 4 a. m. a gale set in from the northeast, which continued with increasing force till 4.30 p. m., when it shifted to northwest and continued through the night with hurricane velocity.

"The dry character of the snow caused it to drift heavily. Local traffic, which had not before been seriously interrupted, was thrown into utter confusion and finally abandoned altogether, with the exception of two cable lines; on these an occasional car was sent out, behind a snow plough, for the purpose of keeping the line clear.
2551 "The street cleaning department was overwhelmed with the storm. As fast as the snow was piled in mounds it would be scattered adrift by the high winds. At noon, all efforts to oppose the storm having been futile, the department stopped work until the wind should subside.

"All railroad lines centering here received ample warning from this office, but they were powerless in the face of such odds. By night the city was absolutely cut off from railway communication in every direction.

"The New York Central Railroad Company informed this office that the tracks of that line were covered in places with ten feet of snow. The Empire State Express, a noted fast train of that line, running between New York and Buffalo, failed to get through from Albany to New York for the first time since the initial trip was made, about seven years ago.

"The hurricane winds, which prevailed at night, were forecast in ample time, and every effort was made by the station force to communicate with every interest involved. As the day was generally observed as a holiday, much difficulty was met in trying to reach some of the shipping companies. Happily, however, the ice gorge so effectually checked the entrances to the ocean and sound
2552 that not a vessel left this port, which is the first instance of the kind in eleven years.

"The temperature at 7 p. m. was 10 degrees, the highest reached since 2 a. m. February 9, making a record of exceptional severity which is unequaled in point of duration in the history of this station."

Under date of February 14 the following is recorded:

"Northwest gale from midnight of the 13th till 5.30 p. m.; maximum velocity, 61 miles, at 3.45 a. m."

The temperature, though showing a slight rising tendency, did not rise above the freezing point, 32 degrees, till the 16th, and gales of sufficient strength to drift the snow continued through the 19th.

Very respectfully,

JAMES H. SCARR,
District Forecaster.

Mr. MCCLENNEN. Counsel for the defendants having called to the attention of counsel for the petitioner certain newspaper items of the New York Herald of February 16, 17, and 19, 1899, it is on the faith of these stipulated that President McKinley left Washington on the evening of Wednesday, February 15, 1899, for the Home Market Club dinner in Boston with his secretaries, including
2553 Mr. Cortelyou, and Cabinet officers, and other public men, and that the party reached Washington on its return journey on the morning of Saturday, February 18, 1899, at seven o'clock a. m.; and that it appears that Secretary Bliss was one of the party, but that Secretary Gage is not mentioned.

Mr. HERRIN. I wish to add, concerning the petitioner's offer in evidence of the inventory of the estate of Charles Crocker, another fact having reference to that offer. I wish to add the item concerning the ownership of shares of the stock of the Pacific Improvement Company, that 12,500 shares of the Pacific Improvement Company's stock was also shown as stock owned by that estate.

I make the same offer of an item appearing from the decree of distribution of the Stanford estate, from which counsel for the petitioner read, showing that there were owned by the Stanford estate 12,500 shares of the stock of the Pacific Improvement Company.

Mr. MCCLENNEN. The petitioner stipulates that the inventory of the estate of Charles Crocker, referred to, and the decree of distribution of the Stanford estate, referred to, contain the items referred to by counsel of 12,500 shares in each case of the stock of the Pacific Improvement Company.

2554 Mr. HERRIN. If it does not appear in the testimony into how many shares the capital stock of the Pacific Improvement Company was divided, we will submit that by an exhibit or memorandum of some kind. I think it is shown that there were 50,000 shares of the capital stock of the Pacific Improvement Company. If it does not so appear, I will get a certified copy from the auditor and file it.

In other words, the Stanford estate and the Crocker estate each held one-quarter of the capital stock of the Pacific Improvement Company, 12,500 shares; and Mr. Huntington and Mr. Mark Hopkins owned one-quarter each of the capital stock, making up between them the other half.

Mr. McCLENNEN. On Mr. Herrin's statement, the petitioner stipulates, without further proof, but under objection, that the capital stock of the Pacific Improvement Company consisted of 50,000 shares of stock.

Mr. HERRIN. We offer in evidence a certified copy of a bill in equity or petition filed in the Circuit Court of the United States for the 9th Circuit, Southern District of California, by the United States of America, by direction of the Attorney General thereof, represented by George J. Denis, United States attorney, and Joseph H.
2555 Call, special attorney, it being a petition in equity against the Southern Pacific Company and a number of other companies and parties, which in substance sets forth that the Southern Pacific Company had obtained a lease of the Southern Pacific Railroad Company's line, and also of the lines of the Central Pacific Railroad Company, copies of which leases are in evidence as exhibits to the bill, thereby constituting a combination in restraint of trade or commerce, and praying the setting aside of those leases and the dissolution of that combination.

The bill is signed by Richard Olney, Attorney General of the United States, and by George J. Denis, United States attorney for the southern district of California, and by Joseph H. Call, special attorney.

I also offer in evidence the order made by the judge of the court, E. M. Ross, judge of the District court, on the filing of the petition, directing that subpœnas issue, and so forth.

I offer this bill with all the exhibits, and all other proceedings shown in the case. This is a certified copy of the record, with the certificate of the clerk of the court.

Mr. McCLENNEN. It is stipulated that in copying this cer-
2556 tified copy of the record as an exhibit there may be omitted from the copy the lease dated February 10, 1885, of the Central Pacific Railroad Company and others to the Southern Pacific Company, and that the copy attached to the bill is the same as the copy of that lease which has heretofore been put in evidence by the defendants.

It is also stipulated that the lease of February 17, 1885, of the Central Pacific Railroad Company to the Southern Pacific Company, which is a copy of the lease of that date, constituting Exhibit A of the petition in the present case, may be omitted in copying defendants' Exhibit No. 96.

It is also stipulated that the exhibit entitled "Articles of Association, Incorporation, Amalgamation, and Consolidation," of May 4, 1888, need not be copied as a part of defendants' Exhibit No. 96, because the substance thereof appears in a petitioner's exhibit.

It is also stipulated that the indenture of August 25, 1888, between the Southern Pacific Railroad Company and the Southern Pacific Company and the Central Trust Company of New York need not be copied as a part of defendants' Exhibit No. 96.

These stipulations are made tentatively. I should like to get
2557 hold of this defendants' Exhibit No. 96 and read it through, and then see if I have any objection to any of it.

The petitioner objects to the introduction of this copy on the ground that it is immaterial, irrelevant, and incompetent, and does not tend in support of any allegations contained in the answer of the defendants or in denial of any allegation contained in the petition.

(The bill in equity referred to was thereupon marked "Defendants' Exhibit No. 96, April 24, 1915," and, with the exceptions above specified, will be found in the volume of defendants' exhibits.)

Mr. BLAIR. So far as counsel for defendants can see, that is all that we have. Of course the case is not formally closed, and we claim the right, if anything is brought to our attention that we think should go in, to offer it.

Mr. MCCLENNEN. The petitioner puts in evidence the fact that between June 30, 1913, and June 30, 1914, there were declared two regular three per cent dividends on the preferred stock of the Central Pacific Railway Company, amounting, in the aggregate, to $1,044,000, and a six per cent dividend on the common stock of the Central Pacific Railway Company, amounting, in the aggregate, to $4,036,530, and that, in addition to this, a special dividend, referred to by
2558 Mr. Kruttschnitt in his testimony, was declared on December 29, 1913, amounting to twenty per cent on the preferred stock and twenty per cent on the common stock, namely, $16,935,100.

(Whereupon an adjournment was taken, subject to notice, counsel for the defendants announcing that they, as far as they know, have no further testimony, but will give the matter further detailed consideration and formally announce the closing of their testimony hereafter.)

(Counsel for the petitioner stated that it is at present their belief that they will have no rebuttal to offer, but that they reserve the right to give definite notice on that subject after the defendants have definitely rested, it being understood that if nothing is said to the examiner as to further offers by counsel before the first of June, 1915, he may then place upon the record an automatic closing of the case.)

2559 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
vs.
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC Railway Company, et al., defendants.
} In Equity. No. 420.

NEW YORK CITY, *May 29, 1915.*

Stipulation.

Counsel for defendants put in evidence a copy of the lease made March 1, 1912, by and between the Central Pacific Railway Company and the Southern Pacific Company.

Counsel for petitioner, while objecting to the offering of said lease in evidence on the ground that it is immaterial, incompetent, and irrelevant, and should not be taken as evidence of the facts recited in it, yet, subject to said objections, stipulate that the said copy may be put in evidence with the same effect as if it were the original of said lease; and it is

2560 Further stipulated that said offer of evidence will have the same effect as if it were made before the examiner with all parties present.

EDWARD F. MCCLENNEN,
Counsel for Petitioner,
Special Assistant to the Attorney General.
J. P. BLAIR,
Counsel for Defendants.

(The lease referred to was thereupon marked "Defendants' Exhibit No. 97, May 29, 1915," and will be found in volume 9 of defendants' exhibits.)

2561 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER,
against
SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC Railway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonor F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, defendants.
} In Equity. No. 420.

It is stipulated by and between the parties to the above-entitled action that the printed copy of the mortgage of the S[illegible]

Pacific Company to the Union Trust Company of New
2562 York, dated August 1, 1899, to which is prefixed the certificate of John V. B. Thayer, vice president of the Union Trust Company of New York, that said copy is a true copy of the original mortgage, shall be received in evidence in this action without further proof as to its execution and shall have the same force and effect as if the original mortgage had been produced before the examiner and offered in evidence. All objections except as to form of proof are reserved.

Dated, May, 27, 1915.

EDWARD F. MCCLENNEN,
Counsel for Petitioner,
Special Assistant to the Attorney General.
J. P. BLAIR,
Counsel for Defendant,
Southern Pacific Company and others.
PERRY D. TRAFFORD,
Counsel for Union Trust Company of New York.

(The mortgage referred to was thereupon marked "Defendants' Exhibit No. 98, May 29, 1915," and will be found in volume 9 of defendants' exhibits.)

2563 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER, *against* SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC Railway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goetlet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonoe F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, defendants.	In Equity. No. 420.

It is stipulated by and between the parties to the above-entitled action that the affidavit of John V. B. Thayer, vice president of
2564 the defendant Union Trust Company of New York, verified the 22nd day of May, 1915, shall be received in evidence in this action and spread upon the minutes and shall have the same force and effect as if the said John V. B. Thayer had appeared personally

before the examiner and had testified orally in the terms of his said affidavit. All objections except as to form of proof are reserved.

Dated, May 27, 1915.

EDWARD F. MCCLENNEN,
Counsel for Petitioner,
Special Assistant to the Attorney General.
J. P. BLAIR,
Counsel for Defendant,
Southern Pacific Company and others.
PERRY D. TRAFFORD,
Counsel for Union Trust Company of New York.

2565 In the District Court of the United States for the District of Utah.

UNITED STATES OF AMERICA, PETITIONER, *against* SOUTHERN PACIFIC COMPANY, CENTRAL PACIFIC Railway Company, Union Trust Company of New York, William Sproule, Julius Kruttschnitt, Robert Goelet, Cornelius N. Bliss, Walter P. Bliss, Henry W. de Forest, J. Horace Harding, Charles W. Harkness, Henry E. Huntington, James N. Jarvie, Leonoe F. Loree, Lewis J. Spence, Eric P. Swenson, James N. Wallace, and Ogden Mills, defendants.	In Equity. No. 420.

CITY AND COUNTY OF NEW YORK, *ss.:*

John V. B. Thayer, being duly sworn, deposes and says: That

2566 he is one of the vice presidents of the Union Trust Company of New York, one of the defendants in the above-entitled action.

That on August 1, 1899, a certain mortgage or deed of trust was made by and between the defendant Southern Pacific Company and the Union Trust Company of New York.

That the original of said mortgage or deed of trust is in the possession of the Union Trust Company of New York; that he has compared a printed copy of said mortgage with the said original mortgage; that he has prefixed to said copy a certificate dated May 21, 1915, and signed by him, to the effect that said printed copy is a true copy of the original mortgage, and that the said printed copy is, in fact, a true copy of said mortgage.

That the stock of the Central Pacific Railway Company deposited with the defendant Union Trust Company of New York, as trustee of the said mortgage, consists of certificates of preferred stock to the amount, at its face value, of seventeen million, four hundred thousand dollars ($17,400,000), and certificates of common stock to the amount, at its face value, of sixty-seven million, two hundred seventy-four thousand two hundred dollars ($67,274,200), and that the said
2567 certificates are all assigned in blank with irrevocable power to transfer the same.

That bonds secured by said mortgage have been issued, and that there are now outstanding such bonds secured by the said mortgage to the amount of thirty-four million, two hundred eighteen thousand, five hundred dollars ($34,218,500).

JOHN V. B. THAYER.

Sworn to before me this 22d day of May, 1915.

WILLIAM B. LOERY,
Notary Public, New York County, No. 167,
New York County Register's No. 7079.

Commission expires March 30, 1917.

(Whereupon the hearing in the above-entitled matter was closed.)

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